



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 13-203, CD1, FD1

RESOLUTION

AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, RELATING TO A MASTER AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU AND THE STATE OF HAWAII FOR SECTIONS OF THE HONOLULU RAIL TRANSIT PROJECT FROM KAMEHAMEHA HIGHWAY TO ALA MOANA CENTER, AND AN AGREEMENT WITH THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION (HART) RELATING TO THE CITY'S ASSIGNMENT AND HART'S ASSUMPTION OF THE CITY'S OBLIGATIONS THEREUNDER.

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, provides that any intergovernmental agreement or any amendments thereto which places an obligation upon the City or any department or agency thereof shall require prior consent and approval of the City Council; and

WHEREAS, the City, by the Honolulu Authority for Rapid Transportation (HART), a semi-autonomous agency of the City, is constructing the Kamehameha Highway Guideway, the Airport Guideway, and the City Center Guideway Sections (Project) of the Honolulu Rail Transit Project (H RTP), which is a fixed guideway system; and

WHEREAS, the Project is proposed to be situated within highway rights-of-way which are under the jurisdiction, authority, and control of the State of Hawaii, Department of Transportation (State); and

WHEREAS, the City and the State mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party within the State's rights-of-way limits; and

WHEREAS, such an arrangement would impose certain obligations on the City, thus necessitating an intergovernmental agreement between the City and the State; and

WHEREAS, under Section 17-103 of the Revised Charter of the City and County of Honolulu, as amended, HART has the authority to develop, operate, maintain and expand the H RTP; and

WHEREAS, Ordinance 07-001 (2007) requires that capital costs to construct the H RTP shall be paid entirely from general excise and use tax surcharge revenues, interest earned on those revenues, and any federal, state, or private revenues; now, therefore,



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BE IT RESOLVED by the Council of the City and County of Honolulu, that the Council hereby consents to and approves the proposed intergovernmental agreement that is attached hereto as Exhibit "1" and by reference made a part of this Resolution which includes and incorporates Exhibits "A" through "I" attached to such Exhibit "1" (the "Intergovernmental Agreement"); and

BE IT FURTHER RESOLVED that the approval by the City Council to execute the Intergovernmental Agreement is subject to the condition that the City and HART shall enter into an agreement or agreements, in substantially the same form as the Assignment and Assumption Agreement attached hereto as Exhibit "2" and by reference made a part of this Resolution, wherein HART shall agree that it is responsible for all obligations of the City under the Intergovernmental Agreement including, without limitation, the obligation to pay for all capital costs to construct the H RTP, and HART shall agree to indemnify, defend, and hold harmless the City from and against any and all costs, claims and liabilities arising out of the Intergovernmental Agreement; and

BE IT FURTHER RESOLVED, that the approval by the City Council to execute the Intergovernmental Agreement is based upon the understanding and intent of the Council that any obligation of the City to participate in future highway mitigation--including land acquisition and operational traffic mitigations--is dependent on 1) the City's agreement that the mitigation is required as a result of a direct impact of the Project, and 2) the City's further agreement to the extent of the cost sharing or costs; and

BE IT FURTHER RESOLVED that the Director of the Department of Transportation Services (DTS Director) or his designee is hereby authorized:

1. To execute an agreement with the State in substantially the same form as the Intergovernmental Agreement attached hereto as Exhibit "1";
2. To execute an agreement with HART in substantially the same form as the Assignment and Assumption Agreement attached hereto as Exhibit "2"; and
3. To execute any incidental or related agreements and documents in furtherance of the Intergovernmental Agreement and the agreement with HART so long as such agreements and documents do not incur additional obligations on the part of the City;

and



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BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Mayor, the Managing Director, the DTS Director, the Director of the State Department of Transportation, the Executive Director and CEO of the Honolulu Authority for Rapid Transportation, and to such other agencies as may be necessary.

INTRODUCED BY:

Ernest Martin (BR)

DATE OF INTRODUCTION:

August 28, 2013
Honolulu, Hawaii

Councilmembers

**Master Agreement
Between
The City and County of Honolulu and the State of Hawaii
For
The Honolulu Rail Transit Project
(Sections to and from: Kamehameha Highway Guideway,
Airport Guideway and City Center Guideway)**

THIS AGREEMENT is effective this _____ day of _____, 2013 (the "Master Agreement"), by and between the STATE OF HAWAII, by its Director of Transportation, whose principal place of business and mailing address is 869 Punchbowl Street, Honolulu, Hawaii, 96813, hereinafter referred to as the "STATE," and the CITY AND COUNTY OF HONOLULU a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, hereinafter referred to as the "CITY." The STATE and the CITY collectively, are the "Parties," and individually a "Party," all as governed by the context in which such words are used.

WITNESSETH THAT:

WHEREAS, Ordinance No. 07-001 authorized the implementation of the Locally Preferred Alternative (the "LPA"), which is a fixed guideway system between Kapolei and the University of Hawaii ("UH") at Manoa, provided that a Minimum Operable Segment (the "MOS") of the LPA is constructed within financial constraints;

WHEREAS, Resolution No. 08-261 approved the MOS beginning at UH-West Oahu (near the Kroc Center), via Farrington Highway and Kamehameha Highway (adjacent to Pearl Harbor), to Aolele Street serving the Honolulu International Airport (hereinafter the "Airport"), to Dillingham Boulevard, to Nimitz Highway, to Halekauwila Street, and ending at Ala Moana Center;

WHEREAS, the CITY, by the Honolulu Authority for Rapid Transportation ("HART"), a semi-autonomous agency of the CITY, is constructing a mass transit system known as the Honolulu Rail Transit Project ("HRTTP") within the MOS which includes the limits of the Kamehameha Highway Guideway Section, the Airport Guideway Section, and the City Center Guideway Section, as described in Article I and Exhibit "A" hereinafter referred to as the "PROJECT";

WHEREAS, the STATE has jurisdiction over all roads, alleys, streets, ways, lanes, bikeways, bridges, and airports in the STATE, opened, laid out, or built by the government and under the jurisdiction of the Department of Transportation (DOT) "STATE";

WHEREAS, the mission of the STATE is to provide a safe, efficient and accessible highway and airport system through the utilization of available resources in the maintenance, enhancement and support of land and air transportation facilities;

WHEREAS, AIRPORT LANDS are those lands and facilities owned by the STATE Department of Transportation, Airports Division, as depicted in the most current Airport Layout Plan, Exhibit B, Property Map (hereinafter "AIRPORT LANDS");

WHEREAS, the PROJECT is proposed to be situated within STATE Highway rights-of-way and AIRPORT LANDS which are under the jurisdiction, authority, and control of the STATE;

WHEREAS, it is in the public interest for the STATE to permit the construction, operation and maintenance of the PROJECT and all transit facilities (hereinafter the "GUIDEWAY FACILITY") within the STATE Highway rights-of-way and upon AIRPORT LANDS, subject to the conditions herein;

WHEREAS, the STATE requires that the GUIDEWAY FACILITY not adversely affect its highway and Airport safety, construction, maintenance, and operations; does not interfere with, or minimizes to the extent possible, as agreed to by the STATE, the free and safe flow of vehicular, bicycle and pedestrian traffic, aircraft movements, and Airport traffic; does not interfere with the STATE's existing, planned, or contemplated future use of the STATE Highway rights-of-way for land transportation purposes and AIRPORT LANDS for air transportation purposes; and the construction, operation, and maintenance of the GUIDEWAY FACILITY within the STATE Highway rights-of-way and AIRPORT LANDS are in accordance with all applicable federal, State, CITY and any other applicable laws, ordinances, and regulations;

WHEREAS, guidelines outlining safe and rational practices for accommodating the GUIDEWAY FACILITY within STATE Highway rights-of-way and AIRPORT LANDS are of valuable assistance to transportation agencies;

WHEREAS, the STATE and the CITY mutually recognize the need for entering into a Master Agreement designating and setting forth the responsibilities of each Party;

WHEREAS, the STATE and the CITY, by mutual agreement, have identified each of the Parties' responsibilities within the STATE Highway and AIRPORT LANDS for the PROJECT, and further, such responsibilities shall be contained in a Joint Use and Occupancy Agreement and Airport Special Provisions (hereinafter "ASP") as appropriate, , as set forth in Exhibit "C" and Exhibit "D" respectively, attached hereto;

WHEREAS, the CITY has the authority pursuant to its Charter and ordinances to enter into this Master Agreement and the STATE has been granted the authority to function adequately in all areas of appropriate jurisdiction including the implementation of an integrated and balanced transportation system and is authorized under the HRS to enter into this Master Agreement; and

WHEREAS, the Director of Transportation has the authority to enter into this Master Agreement for the STATE under HRS Section 26-19;

NOW, THEREFORE, the STATE and the CITY, in and for the consideration of the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound thereby, mutually agree as follows:

ARTICLE I – PROJECT DESCRIPTION

The PROJECT includes, but is not limited to, the design, construction, and maintenance of the Kamehameha Highway Guideway Section, the Airport Guideway Section, and the City Center Guideway Section of the HRTF from approximately four hundred (400) feet east of the Pearl Highlands Station near Kuala Street along Kamehameha Highway (adjacent to Pearl Harbor), onto Nimitz Highway, to Aolele Street and Ualena Street serving the Honolulu International Airport, to Dillingham Boulevard, to Nimitz Hwy, to Halekauwila Street, and ending at Ala Moana Center.

The PROJECT involves the design and construction of approximately 13 miles of elevated guideway, including the associated roadway modifications and other infrastructure. The GUIDEWAY FACILITY consists of a two track elevated structure primarily within the existing STATE Highway alignment and AIRPORT LANDS, and requires utility relocations, reconfiguration and reconstruction of the medians, left turn pockets, traffic signal relocations, signs, pavement markers/markings, roadway widening, pedestrian and bicycle facilities, removal/relocation of existing landscaping and installation of temporary landscaping, landscaping irrigation, drainage facilities, stations, traction power substations, gap breaker stations, and associated grading.

There are fourteen (14) stations along the PROJECT's alignment: the Pearlridge Station, Aloha Stadium Station, Pearl Harbor Station, Airport Station, Lagoon Drive Station, Middle Street Transit Center Station, Kalihi Station, Kapalama Station, Iwilei Station, Chinatown Station, Downtown Station, Civic Center Station, Kakaako Station, and Ala Moana Station. The PROJECT includes the Aloha Stadium third track, site improvements for traction power substations, guideway lighting, miscellaneous electrical/mechanical wayside equipment, switch machines, sound barrier walls, running rails and insulated third rail (contact rail), and installing duct banks and system elements/cable trays.

The Kamehameha Highway Section of the GUIDEWAY FACILITY primarily runs in the median of Kamehameha Highway and will start at a point approximately 460 feet west of where the southern Kamehameha Highway right-of-way line meets the northern Farrington Highway right-of-way line. From here it runs eastward on the south side of Kamehameha Highway for approximately 1,000 feet and then crosses into the median of Kamehameha Highway. It continues running in the median of Kamehameha Highway crossing over H-1 Freeway, Moanalua Freeway, and the Aiea Access ramp. After crossing the Aiea Access ramp it will run on the east side of Kamehameha Highway, crossing over Salt Lake Blvd. and ending approximately 300 feet south of Kohomua Street.

The Airport Guideway Section of the GUIDEWAY FACILITY continues along the south side of Kamehameha Highway, continues to Nimitz Highway and turns south along Aolele Street towards the Airport. It then follows Aolele Street eastbound, crosses through AIRPORT LANDS (i.e. Airport roadways, automobile parking facilities, landscaped areas, etc.) to the Airport Station. From there, it continues eastbound on Aolele Street, bisecting AIRPORT LANDS to Ualena Street and Waiwai Loop east to reconnect to Nimitz Highway near Moanalua Stream, and continues on to terminate past the Middle Street Transit Center Station.

The City Center Guideway Section of the GUIDEWAY FACILITY starts just past the Middle Street Transit Center Station, follows Dillingham Boulevard to the vicinity of Kaaahi Street and then turns east to connect with Nimitz Highway near Iwilei Road. The guideway will follow Nimitz Highway's eastbound direction to Halekauwila Street, then proceeds along Halekauwila Street past Ward Avenue, where it will transition to Queen Street. The guideway will cross from Waimanu Street to Kona Street in the vicinity of Pensacola Street and continue above Kona Street to the Ala Moana Shopping Center.

The CITY's Contractors shall be required to coordinate the safe, efficient, effective, and continued movement of all modes of traffic through the construction zone(s). Preliminary level Maintenance-of-Traffic ("MOT") plans that are based on assumed column locations were coordinated with the STATE. The MOT plans will be refined and finalized during detailed design work by the CITY's Contractors.

The existing landscaping is present along most of the PROJECT. With the reconfiguration and installation of the GUIDEWAY FACILITY columns within the median shoulder, and within AIRPORT LANDS, it will be necessary to remove certain existing landscaping and install temporary landscaping until such time as final landscaping plans are developed.

Utilities relocation will involve both public and private utilities. There will be water, storm water, sanitary sewer, natural gas, fuel, electrical (both underground and overhead), communication (both underground and overhead), traffic signals and conduits, some abandoned fuel lines that are identified as needing to be relocated and removed or capped, and Army Signal Corps lines running through AIRPORT LANDS.

See Exhibit "A" hereto for the PROJECT Map. Should the description of the PROJECT change, the STATE and the CITY agree to amend this Article I and Exhibit "A" in an instrument in writing with a revised description.

ARTICLE II – PURPOSE OF THE MASTER AGREEMENT

The purpose of this Master Agreement is:

1. To coordinate and minimize the impact of the GUIDEWAY FACILITY on the STATE Highways and AIRPORT LANDS;
2. To prescribe the respective responsibilities of the STATE and the CITY and establish cooperative procedures towards achieving the objectives identified herein;
3. To establish the terms and conditions under which the STATE will convey to the CITY and its Contractors rights to use certain STATE Highway rights-of-way and AIRPORT LANDS for the construction, operation, and maintenance of the GUIDEWAY FACILITY as provided herein; and
4. To establish procedures to resolve any disputes between the STATE and the CITY arising in connection with the PROJECT and the GUIDEWAY FACILITY as provided herein.

ARTICLE III – OPERATION AND MANAGEMENT RESPONSIBILITIES

1. For the safe, effective and efficient operations of the STATE Highways system for the public and for the expeditious, effective and efficient design, construction, and operations of the PROJECT, the CITY will assume authority, control, operation, and maintenance responsibilities of the STATE Highways where the PROJECT is within the STATE Highway rights-of-way during construction of the GUIDEWAY FACILITY;
2. For the safe, effective and efficient operations of the Airports system the STATE Airports Division will remain as the authority and assume control, operation, and maintenance responsibilities of the AIRPORT LANDS, as specifically delineated in Exhibit "E", Page 3, where the Project impacts the AIRPORT LANDS;
3. The STATE Highways over which the CITY will assume authority, control, operation, and maintenance responsibilities are portions of Kamehameha Highway and Nimitz Highway/Ala Moana Boulevard ("CITY MAINTAINED STATE HIGHWAYS"), which are more specifically delineated in Exhibit "F", attached hereto and incorporated herein by reference. The limits of the STATE Highway rights-of-way over which the CITY will assume authority, control, operation, and maintenance responsibilities pursuant to this Master Agreement specifically EXCLUDE the right-of-way limits of the H-1 Freeway, the Moanalua Freeway, the Aiea Access ramp, and the H-1 Viaduct;

4. If the location where the PROJECT is located within the STATE Highway rights-of-way and AIRPORT LANDS during construction of the GUIDEWAY FACILITY should change, the Parties agree to amend Exhibit "E" and Exhibit "F" hereto in an instrument in writing with a revised description;

5. The CITY's operational and maintenance duties under this Article for the CITY MAINTAINED STATE HIGHWAYS and GUIDEWAY FACILITY within a Section, except for the AIRPORT LANDS within the Airport Section which shall be governed by the attached ASP, shall commence upon the effective date of the Joint Use and Occupancy Agreement of that particular Section.

6. The CITY agrees to reimburse the STATE for the street cleaning, inspection of drains and culverts, and cleaning of other areas as necessary and as mutually agreed, subject to the following:

- a. If the work is performed by contractor(s), the STATE shall submit to the CITY invoices for the work performed; or
- b. If the work is a direct labor cost incurred by the STATE, the CITY agrees to reimburse the STATE for direct labor costs, employee fringe benefits, and indirect costs related to the direct labor costs incurred by the STATE subject to the following:
 1. The STATE shall prepare and submit a staffing plan for approval by the CITY.
 2. Eligible reimbursable direct labor costs shall be supported by periodic certifications or personnel activity reports or equivalent documentation pursuant to 2 C.F.R. Part 225, Appendix B, Section 8.h, including, but not limited to, timesheets signed by the employee and approved by a supervisor or other responsible official(s) of the STATE.
 3. The employee fringe benefit rate and indirect cost rate to be applied to direct labor costs shall be the prevailing employee fringe benefit rate and indirect cost rate at the time the direct labor costs are incurred.
 - a. The STATE shall submit to the CITY a copy of the employee fringe benefit rate officially established for each fiscal year within fifteen (15) calendar days of the establishment of the employee fringe benefit rate.
 - b. The STATE shall submit to the CITY a copy of the indirect cost rate approved by the STATE's Federal cognizant agency for each fiscal year within fifteen (15) calendar days of the Federal cognizant agency's approval of the indirect cost rate.

4. The same labor costs that are treated as indirect costs shall not be claimed as direct labor costs.

An authorized STATE representative shall verify that work by the STATE for the street cleaning, inspection of drains and culverts, and cleaning as necessary for areas by mutual agreement was performed satisfactorily by signing a "Verified and Recommend Approval" signature block on the employees' invoices.

7. Once the CITY has assumed the operational and maintenance duties of this Article over the CITY MAINTAINED STATE HIGHWAYS for a particular Section, the CITY shall perform the operational and maintenance duties of this Article for that Section until the STATE assumes the operational and maintenance duties for that Section as described in paragraph 13 of this Article;

8. For each Section, the CITY agrees to assume sole authority and control to operate and maintain the CITY MAINTAINED STATE HIGHWAYS during construction of the GUIDEWAY FACILITY in accordance with STATE requirements, including, but not limited to, construction, operations, maintenance and environmental work and reporting as required by law, rule, or regulation;

9. For each Section, the CITY shall assume the total operational and maintenance duties for the CITY MAINTAINED STATE HIGHWAYS during the construction of the GUIDEWAY FACILITY. The CITY MAINTAINED STATE HIGHWAYS shall be operated and maintained in accordance with current STATE policies, standards and guidelines. Such duties include, but are not limited to, the entire median, from curb face to curb face, for watering, weeding, fertilizing, mowing, reseeding, cultivating, spraying, mulching, trimming and care of shrubs and trees, edging, invasive plant removal and other services necessary for care and median plantings; curb repairs; sidewalk repairs; paving repairs; replacement of dead or damaged plants; street cleaning; cleaning and clearing of sidewalks, gutters, swales, and ditches; highway lighting repairs and replacement; removal and disposal of trash and debris at no cost to the STATE, and further take reasonable measures to mitigate, at the CITY's own costs and expenses, any and all vehicular and pedestrian traffic safety and congestion impacts on the CITY MAINTAINED STATE HIGHWAYS during the construction of the GUIDEWAY FACILITY;

10. The CITY shall comply with the Consent Decree dated September 29, 2005, in the case of United States of America, Department of Health, State of Hawaii v. Department of Transportation, State of Hawaii, Civil No. 05-00636 HG, attached hereto as Exhibit "G" and incorporated by reference ("Consent Decree"), and the latest National Pollutant Discharge Elimination System Permit issued by the Department of Health, attached hereto as Exhibit "H" and incorporated by reference ("NPDES Permit") within the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS;

11. Prior to the effective date of any Joint Use and Occupancy Agreements and the ASP, the CITY shall at its own expense conduct a site inventory of the site covered by the said Joint Use and Occupancy Agreement and ASP to identify any existing environmental violations. The CITY shall notify the STATE of the results of such site inventory and shall provide the STATE with all testing results and reports from the site inventory. If the CITY contends that the site inventory has identified environmental violations, the CITY and STATE shall attempt to negotiate a mutually acceptable resolution. At and as of the time the CITY assumes the operational and maintenance duties of this Article for a Section until the STATE assumes the operational and maintenance duties as described in this Article, the CITY shall be responsible for any environmental violations that arise out of, are connected with, or are otherwise related to the CITY's activities under this Master Agreement and shall be responsible for fines, mitigation requirements or other enforcement arising from said environmental violations regardless of when the enforcement action is taken or imposed;

12. For each Section, the CITY shall return the CITY MAINTAINED STATE HIGHWAYS for that Section to the STATE in accordance with federal and STATE standards, and shall provide a warranty for any work performed by the CITY or the CITY's Contractors on the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS in the applicable Section for twenty-four (24) months after STATE acceptance of PROJECT work and maintenance work to the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS. Such warranty shall be identical to the warranty required by the CITY of the CITY's Contractors for the PROJECT work, a copy of which is attached hereto as Exhibit "I" and incorporated by reference;

13. For each Section, the STATE shall assume the total operational and maintenance duties for the CITY MAINTAINED STATE HIGHWAYS for that Section after the PROJECT is completed and accepted by the CITY in that Section, and the PROJECT work and maintenance work to the CITY MAINTAINED STATE HIGHWAYS in that Section is accepted by the STATE, which acceptance shall not be unreasonably withheld. Prior to the STATE assuming and accepting the operational and maintenance duties for the CITY MAINTAINED STATE HIGHWAYS from the CITY for a Section, the CITY shall notify the STATE in writing of the proposed return of the operational and maintenance duties to the STATE for that Section and the CITY shall conduct a site inspection with the STATE on the acceptance of the CITY MAINTAINED STATE HIGHWAYS. Should the STATE have any objections to the PROJECT work and maintenance work to the CITY MAINTAINED STATE HIGHWAYS for a Section, the STATE shall have thirty (30) calendar days after the site inspection to submit a statement of written objections to the CITY, otherwise the STATE shall be deemed to have accepted such work and shall assume operational and maintenance duties over the CITY MAINTAINED STATE HIGHWAYS for that particular Section. Any written objections by the STATE shall be appropriately addressed by the CITY for acceptance by the STATE, which acceptance shall not be unreasonably withheld;

14. After construction of the GUIDEWAY FACILITY is completed and the STATE has accepted the PROJECT work and maintenance work for a Section, the STATE will resume sole authority and control to operate and maintain the CITY MAINTAINED STATE HIGHWAYS within that Section in accordance with STATE requirements, including, but not limited to, operations, maintenance and environmental work and reporting as required by law, rule, or regulation.

ARTICLE IV – DESIGN AND CONSTRUCTION MANAGEMENT CONSULTANT

1. To carry out the terms of this Master Agreement in an expeditious, effective, and efficient manner, the CITY shall procure a Design and Construction Management Consultant for the Kamehameha Guideway, the Airport Guideway, and the City Center Guideway Sections to work under the direction and on behalf of the STATE to review, coordinate, and respond to the PROJECT design submittals; to coordinate the STATE's projects and permits for the PROJECT; to perform required design reviews and construction inspections for the PROJECT; and to monitor compliance with the Consent Decree and the NPDES Permit;

The CITY agrees that its consultants will work together with the Design and Construction Management Consultants, and allow the Design and Construction Management Consultants to review all documents necessary for the Design and Construction Management Consultants to effectively review, coordinate and respond on the STATE's behalf.

2. The CITY agrees the Design and Construction Management Consultants shall coordinate the PROJECT with other STATE's projects and permits on the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS;

3. The CITY agrees the Design and Construction Management Consultants will have adequate staff to carry out the functions identified in ARTICLE IV, Items 1 and 2;

4. Office space may be available at CITY offices for the Design and Construction Management Consultants to conduct activities which are required to be provided at the CITY office site, including, but not limited to, work space, office furniture and equipment;

5. The CITY agrees to fully fund the contracts for the Design and Construction Management Consultants;

The CITY acknowledges that the Airport Guideway portion of the PROJECT is substantially different than work on CITY MAINTAINED STATE HIGHWAYS, and agrees to approve and fully fund subconsultants, as needed by the Design and Construction Management Consultant, to perform additional work associated with the Airport Guideway PROJECT. The STATE shall not be held to the CITY's deadlines in the event of CITY delays in approving such subconsultants.

6. The CITY agrees to reimburse the STATE Highways and Airports for direct labor costs, employee fringe benefits and indirect costs related to the direct labor costs incurred by the STATE's staff for the review and coordination of the PROJECT, subject to the following:

- a. The STATE shall prepare and submit a staffing plan for approval by the CITY;
- b. Eligible reimbursable direct labor costs shall be supported by periodic certifications or personnel activity reports or equivalent documentation pursuant to 2 C.F.R. Part 225, Appendix B, Section 8.h, including, but not limited to, timesheets signed by the employee and approved by a supervisor or other responsible official(s) of STATE;
- c. The employee fringe benefit rate and indirect cost rate to be applied to direct labor costs shall be the prevailing employee fringe benefit rate and indirect cost rate at the time the direct labor costs are incurred;
 1. The STATE shall submit to the CITY a copy of the employee fringe benefit rate officially established for each fiscal year within fifteen (15) calendar days of the establishment of the employee fringe benefit rate; and
 2. The STATE shall submit to the CITY a copy of the indirect cost rate approved by STATE's Federal cognizant agency for each fiscal year within fifteen (15) calendar days of the Federal cognizant agency's approval of the indirect cost rate; and
- d. The same labor costs that are treated as indirect costs shall not be claimed as direct labor costs.

An authorized STATE representative shall verify that work by the STATE to review and coordinate the Project was performed satisfactorily by signing a "Verified and Recommend Approval" signature block on the employees' invoices.

7. Should the PROJECT be cancelled for any reason, the CITY shall terminate the contracts for the Design and Construction Management Consultants for convenience.

ARTICLE V – DESIGN

1. The CITY agrees that the STATE will review the PROJECT designs and provide comments to the CITY;
2. The CITY shall submit to the STATE, PROJECT-related design submittals that affect STATE Highway rights-of-way on the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS. The STATE will receive intermediate and semi-final design submittals for review. The STATE shall review and accept any design submittals of any facilities that affect the safety and/or operations of the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS;

3. The Parties agree that the final design drawings approved by the STATE shall constitute the final work scope for PROJECT construction insofar as the design affects the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS;

4. The CITY has identified in Exhibit "E" the properties within the STATE Highway rights-of-way and AIRPORT LANDS necessary for the CITY and its Contractors to complete the PROJECT as described in ARTICLE I and Exhibit "A";

5. The CITY shall provide to the STATE its Contractors' and Design Consultants' submittal schedules for review and the CITY agrees to address the STATE's design review process when reviewing the CITY's Contractors and Design Consultants' schedules;

6. Relocation, modification and/or reconstruction of the STATE's facilities shall be in accordance with the latest and most current STATE and Federal policies, criteria, guidelines and manuals unless otherwise agreed to between the Parties;

7. The Parties acknowledge that timely STATE review of PROJECT-related design submittals is critical and therefore time is of the essence to maintaining the PROJECT schedule. The STATE shall have twenty-one (21) calendar days or a mutually agreed upon time frame for the STATE's review and approval;

The CITY agrees that having the Design and Construction Management Consultants conduct periodic reviews of its design progress in advance of the formal design submittals will assist in the STATE meeting the time frame for the STATE's review. The CITY agrees that lack of periodic reviews could affect the STATE in meeting the time frame for STATE's reviews.

8. The STATE's review of PROJECT-related design submittals which affect STATE highway facilities and the State Highway System, and AIRPORT LANDS will be limited to review for conformance to STATE and Federal design standards and requirements, including those of the Federal Highway Administration ("FHWA") and Federal Aviation Administration ("FAA"), and the CITY will be responsible for all other aspects of design;

9. The Parties agree that an up-to-date and appropriately maintained website for the communication and collaboration between the Parties on submittals for review will be implemented. The website will be developed, implemented and updated by the CITY as required;

10. The CITY shall submit to the STATE for review and approval any and all GUIDEWAY FACILITY design plans and specifications for future significant additions, changes, and alterations to, and modification and replacement of, any facilities within STATE Highway rights-of-way and AIRPORT LANDS insofar as such matters affect the safety and/or operations of the STATE Highway and Airport system within the limits of the PROJECT, and such approval shall not be unreasonably withheld;

11. After the acceptance of the design plans and specifications by the Parties, no significant or material changes that affect or impact the safety and/or operations of the State Highway, the Airport, the Joint Use and Occupancy Agreement, the ASP, or the Construction Permit may be made to the design plans and specifications unless agreed in writing by both Parties. The CITY shall timely notify the STATE in writing of all minor, non-significant changes or modifications;

12. The CITY shall timely provide to the STATE for submittal to the FHWA and FAA such drawings, data, reports, records, contracts, or other documents relating to the PROJECT as are necessary for the STATE FHWA, and FAA to process an application to utilize land existing within the publicly acquired right-of-way of any Federal-Aid Highway or AIRPORT LANDS for the PROJECT. All communication with FHWA and FAA will be through the STATE;

13. Within six (6) months after completion of each section of the GUIDEWAY FACILITY, the CITY will furnish the STATE with "as-built" drawings. The "as-built" drawings shall conform to the STATE CADD software and Airport Drafting Guidelines;

14. Within six (6) months after completion of each section of the GUIDEWAY FACILITY, the CITY will furnish the STATE with one (1) hardcopy and one (1) '.pdf' electronic file of all design related reports.

ARTICLE VI – CONSTRUCTION

1. Construction work related to the GUIDEWAY FACILITY shall be performed by the CITY and its Contractors and the GUIDEWAY FACILITY shall be constructed in accordance with current STATE and federal policies, standards and guidelines. The STATE grants to the CITY and its Contractors the right to construct the PROJECT on, within, under, over, and across the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS. The CITY's construction duties under this Article for the CITY MAINTAINED STATE HIGHWAYS and GUIDEWAY FACILITY within a Section, except for the AIRPORT LANDS within the Airport Section which shall be governed by the ASP, shall commence upon the effective date of the Joint Use and Occupancy Agreement of that particular Section.

2. For each Section, the CITY shall notify the STATE in writing prior to the initial entry by the CITY or its Contractors onto the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS after execution of this Master Agreement and after the execution of the applicable Joint Use and Occupancy Agreement and ASP.

3. The CITY shall cause to be performed and the STATE agrees to the relocation, modification, or reconstruction of STATE facilities on CITY MAINTAINED STATE HIGHWAYS and all facilities located on AIRPORT LANDS as necessitated for the GUIDEWAY FACILITY, including, but not limited to, streets, utilities, traffic signals, traffic signing, street lighting, signing, landscaping, street furniture and sidewalks, which shall be in accordance with the STATE and Federal design standards and requirements.

4. The replacement of or modifications to the STATE facilities as necessitated for the GUIDEWAY FACILITY and STATE and Federal design standards and requirements shall be at the CITY's expense.

5. The CITY shall be responsible for any permits required for the GUIDEWAY FACILITY, including, but not limited to, construction and environmental permits.

6. All GUIDEWAY FACILITY schedules for construction work that relate to the safety and/or operation of the CITY MAINTAINED STATE HIGHWAYS and all facilities located on AIRPORT LANDS shall be approved by the STATE.

7. All GUIDEWAY FACILITY work performed by the CITY's Contractors related to the safety and/or operation of the CITY MAINTAINED STATE HIGHWAYS and all facilities located on AIRPORT LANDS may be inspected by the STATE or its representatives.

8. The CITY shall coordinate with the STATE to keep the STATE informed of the GUIDEWAY FACILITY construction activities and complaints.

9. During construction, the Parties shall agree to schedule joint meetings between STATE staff and the CITY staff to review progress of construction and future actions.

10. The CITY shall be responsible for coordinating the necessary modification and/or relocation of all existing utilities, including obtaining additional rights-of-way. Any and all work found to be unacceptable by the STATE shall be appropriately addressed by the CITY for acceptance by the STATE.

11. Within the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS, the CITY shall comply with the Consent Decree and the NPDES Permit. The CITY shall be responsible for environmental violations as set forth in Paragraph 11 of Article III of this Master Agreement, except any environmental violations arising out of or related to the STATE's work.

12. The CITY shall not allow additional runoff into the STATE drainage facilities unless the CITY demonstrates that retaining the additional runoff on-site is not practical and the additional runoff will have no negative impacts to the existing facility. The STATE will have the right to review and accept or deny such design.

ARTICLE VII – BETTERMENTS

1. The STATE in collaboration with the CITY may add betterments to the PROJECT scope of work when in the best interest of the public and feasible.

2. The STATE shall be solely responsible for all costs due to the betterments, including design and increased construction management expenses associated with the betterments, and all construction costs, unless otherwise agreed to by the CITY.

3. It is agreed that the betterment work and costs on the State Highways must be accepted by both the CITY and the STATE.

4. Prior to the construction of any betterments, the CITY and the STATE shall enter into a separate written agreement regarding betterments that will specify, among other things, the funding and payment mechanisms for any betterments as provided in ARTICLE VII, Paragraph 2.

ARTICLE VIII – TRAFFIC MANAGEMENT

1. The construction of the GUIDEWAY FACILITY will cause increased traffic congestion for vehicular, bicycle, and pedestrian modes of travel, and the CITY shall develop and maintain traffic plans, such as maintenance of traffic plans and traffic control plans, to minimize traffic congestion to allow free and safe flow of vehicular, bicycle and pedestrian traffic, aircraft, and emergency response efforts on this corridor during construction.

2. To further manage the traffic affected by the construction of the GUIDEWAY FACILITY during the construction of the PROJECT, the CITY agrees to procure a Transportation Management Consultant who shall be assigned and dedicated solely to manage the GUIDEWAY FACILITY's traffic plans in coordination with both the STATE, including the Airport and the CITY traffic operations offices until the PROJECT is fully operational.

3. The Transportation Management Consultant shall manage the PROJECT's traffic plans affected by the GUIDEWAY FACILITY.

4. The Transportation Management Consultant shall utilize existing Intelligent Transportation Systems (ITS) and the transportation management center capabilities to manage traffic on this corridor, implement new ITS strategies to complement existing ITS for the purpose of managing traffic effectively and efficiently on this corridor, and the CITY shall be responsible for all costs to implement new ITS strategies due to traffic impacts caused by the GUIDEWAY FACILITY.

5. The CITY's public involvement team will coordinate with the Transportation Management Consultant for the purpose of providing current information to the public and media;

6. The CITY agrees to solely fund the contract for the Transportation Management Consultant.

7. Should the PROJECT be cancelled for any reason, the CITY shall terminate the contract for the Transportation Management Consultant for convenience.

ARTICLE IX – PUBLIC OUTREACH

1. It is agreed for the proper management of all surface modes of transportation on this corridor, public awareness and coordination is needed. The information needed for public awareness should include, but not be limited to, information on construction phasing and scheduling, traffic congestion levels, lane closures and detours; operations and management; aesthetic mitigation resulting from public concerns for the life of the PROJECT, as defined in this Master Agreement; and the public coordination required for public awareness, public outreach strategies and response capabilities.

2. The CITY shall be responsible for the public outreach and awareness related to the PROJECT, and to respond to public inquiries and complaints.

3. The CITY shall establish a 24-hour hotline telephone number.

ARTICLE X – JOINT USE AND OCCUPANCY AGREEMENT

1. Upon issuance of a Construction Notice to Proceed for each Section (except the AIRPORT LANDS which is governed by the terms of the ASP), the Parties shall enter into a Joint Use and Occupancy Agreement, for properties located in each Section identified for the GUIDEWAY FACILITY, in a form similar in all material respects to the document attached as Exhibit "C" hereto, which is hereby incorporated into this Master Agreement by reference for all purposes. The CITY shall give the STATE sixty (60) days notice or notice as otherwise agreed to by the Parties prior to issuing the Construction Notice to Proceed for each Section of the GUIDEWAY FACILITY.

ARTICLE XI – AIRPORT SPECIAL PROVISIONS

Upon issuance of a Construction Notice to Proceed for the Section on AIRPORT LANDS, the Parties shall enter into the Airport Special Provisions, in a form similar in all material respects to the document attached as Exhibit "D" hereto, which is hereby incorporated into the Master Agreement by reference for all purposes. The CITY shall give the STATE sixty (60) days notice or notice as otherwise agreed to by the Parties prior to issuing the Construction Notice to Proceed.

ARTICLE XII- MISCELLANEOUS

1. Time is of the Essence. The Parties acknowledge and agree that time is of the essence as to each and every obligation under this Master Agreement.

2. Compliance with Laws. The CITY shall complete the PROJECT in accordance with all applicable Federal, STATE, and CITY laws.

3. Funding. The CITY shall provide all the necessary funds for completion of the GUIDEWAY FACILITY, including all costs for any future mitigations as specified in the Joint Use and Occupancy Agreement and Airport Special Provisions through any of its available means. The STATE is under no obligation for funding for the GUIDEWAY FACILITY as a result of this Master Agreement. This paragraph does not apply to betterments.

4. No Third-Party Agreements. Except as otherwise authorized in writing by the STATE, the CITY shall not execute any contract or obligate itself in any manner requiring action/approval from the STATE. The CITY will be responsible for payment to third-party contractors retained by the CITY for the PROJECT.

5. Dispute Resolution. The Parties shall resolve all disputes regarding all items in this Master Agreement at the lowest staff level possible. Disputes subject to this provision include, but are not limited to, the following: physical impacts, safety and operational impacts, long-term PROJECT impacts, regulatory impacts, design review and approval, personnel, additional rights-of-way, credits for funds expended, and preparation of additional intergovernmental agreements necessary to implement this Master Agreement. In the event the Parties are unable to resolve disputes at the staff level, the matter shall be referred to the City and County of Honolulu, Director of the Department of Transportation Services and the State of Hawaii, Director of the Department of Transportation for resolution.

6. Except as stated in this Master Agreement, the STATE shall not incur any responsibility nor any liability under contract, tort or otherwise for any of its review and/or approvals for the GUIDEWAY FACILITY provided herein.

7. Indemnity. Notwithstanding any agreements to the contrary between the Parties, the CITY shall hold harmless, defend, and indemnify the STATE from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses for loss, injury, death, or damage under tort, contract or otherwise, including, but not limited to, claims of property damage, personal injury, or death of persons, and economic loss, whenever such loss, injury, death, or damage arises out of, is connected with, or related to the CITY's acts, omissions, rights and responsibilities under this Master Agreement, provided, however, that the CITY shall not be responsible for indemnifying the STATE from and against any claims or damages arising out of the negligence or intentional misconduct of the STATE.

8. Insurance. The CITY shall procure or cause to be procured and maintained during the term of this Master Agreement, comprehensive general liability insurance, and if necessary, excess liability insurance, with combined single limits of not less than \$5,000,000 for bodily injury and property damage per occurrence, which shall cover all the claims arising out of, connected with, or related to rights and responsibilities under this Master Agreement. Such policy(ies) shall name the STATE as an additional insured. The policies of insurance for the CITY's Contractors working on the PROJECT, GUIDEWAY FACILITY and CITY MAINTAINED STATE HIGHWAYS and the AIRPORT LANDS shall name the STATE as an additional insured.

The CITY shall furnish the STATE with evidence that such policy or policies have been issued and are in force, and without notice or demand, furnish like certificate(s) upon each renewal thereof. The CITY shall provide the STATE with thirty (30) days prior written notice of any termination or cancellation of the coverage provided by said policy or policies. The minimum limits of insurance recited herein may be increased by the STATE as the STATE deems necessary in the exercise of sound business judgment. All insurance required herein shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the STATE. This paragraph shall not relieve or release the CITY from its responsibilities under this Master Agreement or limit the amount or degree of the CITY's liability, and shall not be construed to transfer any liability from the STATE to the CITY.

The CITY may, at its sole discretion, elect to self-insure any and all insurance it is required to provide hereinabove.

9. No Obligation to Third Parties. There are no intended third party beneficiaries to this Master Agreement. It is expressly understood that the enforcement of the terms and conditions of this Master Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the CITY and the STATE, and nothing contained in this Master Agreement shall give or allow any legal or equitable remedy, claim, or right of action by any third person under this Master Agreement. It is the express intention of the Parties that any third person who receives benefits under this Master Agreement shall be deemed an incidental beneficiary only.

10. Binding Effect. All provisions contained in this Master Agreement shall be binding upon and inure to the benefit of the respective Parties, their successors and permitted assigns, and officers, agents, and employees or any person acting for and on their behalf.

11. Singular, Plural, Gender. All words used herein in the singular number shall extend to and include the plural. All words used in the gender shall extend to and include all genders.

12. Severability. The portions of this Master Agreement shall be severable, and any invalidity, unenforceability, or illegality of any provision or provisions of this Master Agreement shall not affect any other provision or provisions of this Master Agreement, and each term or provision of this Master Agreement shall be construed to be valid and enforceable to the full extent permitted by law.

13. Assignment. This Master Agreement is binding upon the Parties and any agency of government may assume the rights and obligations of a Party provided that the Party making such assignment shall continue to be obligated under the terms of the Master Agreement; otherwise the Master Agreement is non-transferable and non-assignable in whole or in part, except by an instrument, in writing, signed by the Parties.

14. Headings. The headings and captions herein are for convenience or reference only and are not intended to fully describe, define, or limit the provisions of this Master Agreement to which they may pertain.

15. Entire Agreement; Amendment. This writing embodies the whole agreement and understanding of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Master Agreement shall supersede all previous communications, representations, or agreements either verbal or written, between the Parties hereto. This Master Agreement cannot be modified except by an instrument, in writing, signed by each of the Parties.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed the day and year first above written.

CITY AND COUNTY OF
HONOLULU

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

By: Michael D. Formby, Director
Department of Transportation Services
City & County of Honolulu

By: Glenn M. Okimoto, Ph.D.
Director, Department of Transportation
State of Hawaii

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

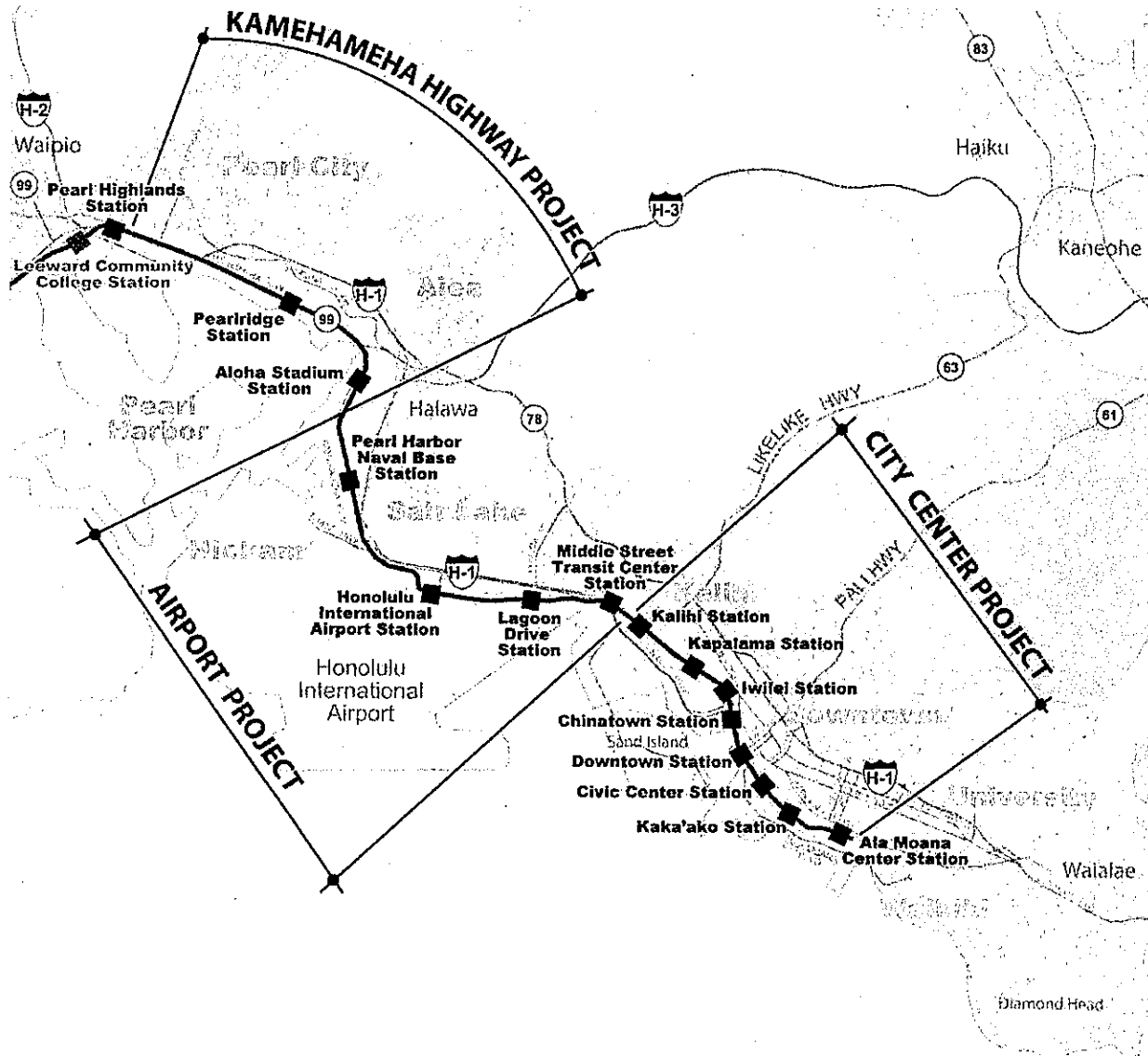
By: Nelson H. Koyanagi, Jr., Director
Department of Budget & Fiscal Services

Deputy Attorney General

APPROVED AS TO FORM
AND LEGALITY:

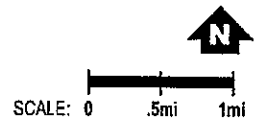
Deputy Corporation Counsel

EXHIBIT "A"
Project Map



LEGEND :

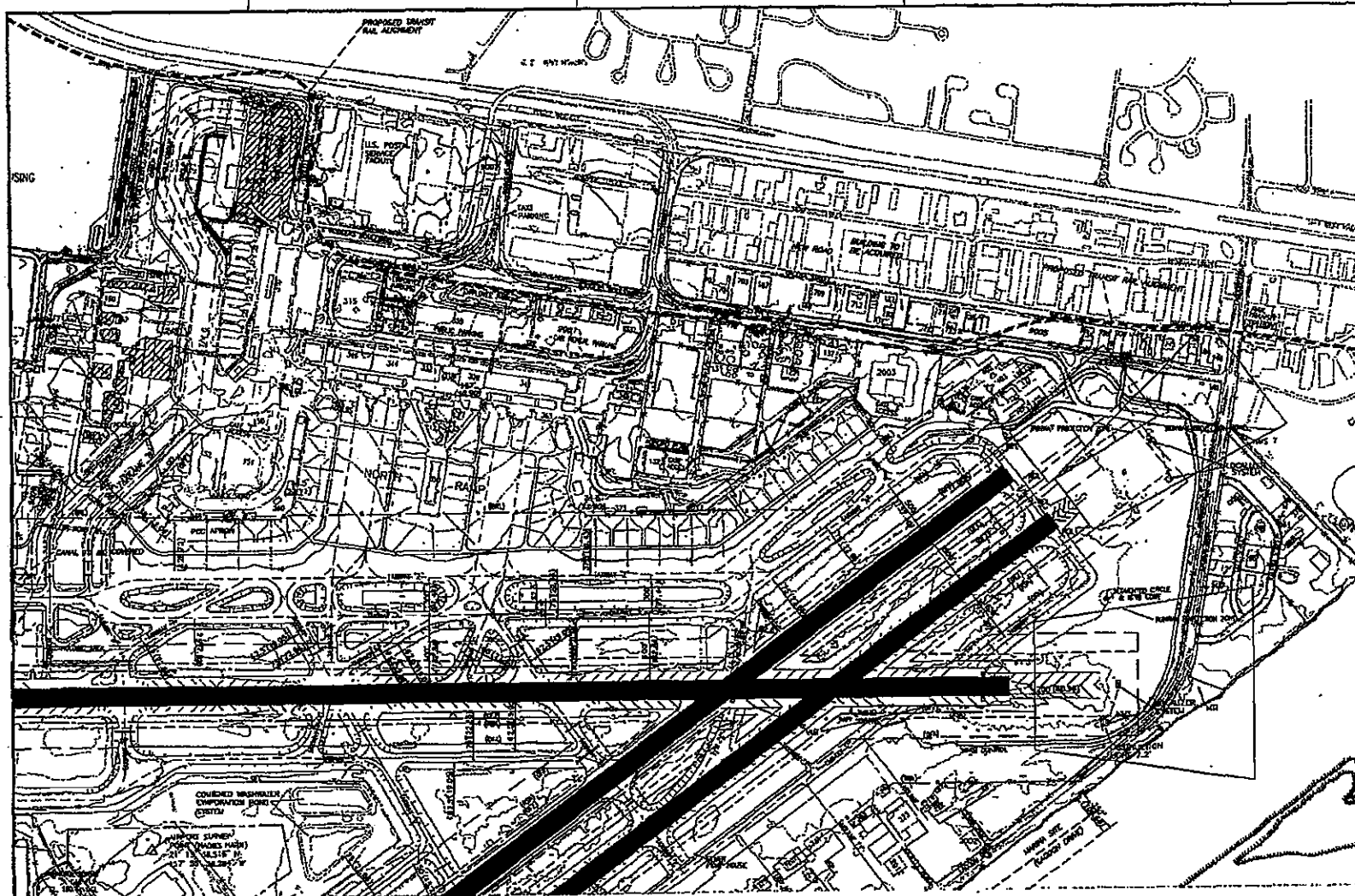
- Proposed Alignment
- Proposed Station Locations



HONOLULU RAIL TRANSIT PROJECT
Kamehameha Highway, Airport & City Center Projects

May 2013

Exhibit B



EXISTING AND PROPOSED AIRPORT BUILDING AND FACILITY LIST

NO.	DESCRIPTION	AREA (AC)	STATUS	REMARKS
1	Runway 1	1,000 x 150	Existing	
2	Runway 2	1,000 x 150	Existing	
3	Taxiway 1	100 x 50	Existing	
4	Taxiway 2	100 x 50	Existing	
5	Terminal Building	100 x 50	Existing	
6	Control Tower	50 x 50	Existing	
7	Hangar 1	200 x 100	Existing	
8	Hangar 2	200 x 100	Existing	
9	Passenger Terminal	100 x 50	Existing	
10	Freight Building	100 x 50	Existing	
11	Customs Building	50 x 50	Existing	
12	Immigration Building	50 x 50	Existing	
13	Post Office	50 x 50	Existing	
14	Police Station	50 x 50	Existing	
15	Fire Station	50 x 50	Existing	
16	Garage	50 x 50	Existing	
17	Warehouse	100 x 50	Existing	
18	Office Building	50 x 50	Existing	
19	Restaurant	50 x 50	Existing	
20	Hotel	100 x 50	Existing	
21	Bus Station	50 x 50	Existing	
22	Train Station	50 x 50	Existing	
23	Shopping Center	100 x 50	Existing	
24	Parking Lot	100 x 50	Existing	
25	Access Road	50 x 50	Existing	
26	Water Main	50 x 50	Existing	
27	Sewer Main	50 x 50	Existing	
28	Electricity Main	50 x 50	Existing	
29	Gas Main	50 x 50	Existing	
30	Telephone Main	50 x 50	Existing	
31	Fire Main	50 x 50	Existing	
32	Water Tank	50 x 50	Existing	
33	Storm Drain	50 x 50	Existing	
34	Sanitary Drain	50 x 50	Existing	
35	Electricity Pole	50 x 50	Existing	
36	Gas Pole	50 x 50	Existing	
37	Telephone Pole	50 x 50	Existing	
38	Fire Pole	50 x 50	Existing	
39	Water Valve	50 x 50	Existing	
40	Sewer Valve	50 x 50	Existing	
41	Electricity Transformer	50 x 50	Existing	
42	Gas Valve	50 x 50	Existing	
43	Telephone Cabinet	50 x 50	Existing	
44	Fire Alarm	50 x 50	Existing	
45	Water Meter	50 x 50	Existing	
46	Sewer Manhole	50 x 50	Existing	
47	Electricity Pole	50 x 50	Existing	
48	Gas Pole	50 x 50	Existing	
49	Telephone Pole	50 x 50	Existing	
50	Fire Pole	50 x 50	Existing	

DEPARTMENT OF TRANSPORTATION
STATE OF HAWAII

LOCATION PLAN
HAWAII

KEY PLAN / NOTES

VICINITY MAP

GRAPHIC SCALE IN FEET
GRAPHIC SCALE IN METERS

NORTH

APPROVED BY: [Signature]
DATE: JULY 2013

DEPARTMENT OF TRANSPORTATION
STATE OF HAWAII

PROJECT TITLE:
AIRPORT LAYOUT PLAN

PROJECT NO.:
AO1011-08

SHEET TITLE:
AIRPORT PLAN

2 OF 5
NORTHEAST

DATE:
JULY 2013

SHEET NO.:
4

OF 15 SHEETS

EXHIBIT "C"

**JOINT USE AND OCCUPANCY AGREEMENT
FOR**

SECTION

THIS AGREEMENT is effective this _____ (the "Joint Use and Occupancy Agreement"), by and between the STATE OF HAWAII, by its Director of Transportation, whose principal place of business and mailing address is 869 Punchbowl Street, Honolulu, Hawaii, 96813, hereinafter referred to as the "STATE," and the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, hereinafter referred to as the "CITY." The STATE and the CITY collectively, are the "Parties," and individually a "Party," all as governed by the context in which such words are used.

WITNESSETH THAT:

WHEREAS, Ordinance No. 07-001 authorized the implementation of the Locally Preferred Alternative (the "LPA"), which is a fixed guideway system between Kapolei and the University of Hawaii ("UH") at Manoa, provided that a Minimum Operable Segment (the "MOS") of the LPA is constructed within financial constraints;

WHEREAS, Resolution No. 08-261 approved the MOS beginning at UH-West O'ahu (near the Kroc Center), via Farrington Highway and Kamehameha Highway (adjacent to Pearl Harbor), to Aolele Street serving the Airport, to Dillingham Boulevard, to Nimitz Highway, to Halekauwila Street, and ending at Ala Moana Center;

WHEREAS, the CITY, by the Honolulu Authority for Rapid Transportation ("HART"), a semi-autonomous agency of the CITY, is constructing a mass transit system known as the Honolulu Rail Transit Project ("HRTTP") within the MOS which includes the limits of the Kamehameha Highway Guideway Section, the Airport Guideway Section, and the City Center Guideway Section, as described in Article I and Exhibit "A" of the Master Agreement hereinafter referred to as the "PROJECT";

WHEREAS, the PROJECT is proposed to be situated within STATE Highway rights-of-way which are under the jurisdiction, authority, and control of the STATE;

WHEREAS, HART and the STATE entered into the Master Agreement between the City and County of Honolulu and the State of Hawaii for the Honolulu Rail Transit Project, dated _____ (the "Master Agreement");

WHEREAS, in accordance with the terms of the Master Agreement, the CITY has identified certain properties within the STATE's rights-of-ways necessary for the CITY to complete the PROJECT;

WHEREAS, in accordance with the terms of the Master Agreement, the CITY and the STATE desire to enter into this Joint Use and Occupancy Agreement for the certain properties more specifically identified herein;

WHEREAS, it is in the public interest for the STATE to permit the construction, operation and maintenance of the PROJECT and transit facilities (hereinafter referred to as "GUIDEWAY FACILITY") within the STATE Highway rights-of-way subject to the conditions herein; and

WHEREAS, the STATE does not object to granting the CITY's joint use and occupancy rights over the certain properties provided the CITY complies with the terms and conditions set forth below;

NOW, THEREFORE, the Parties, in and for the consideration of the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound thereby, hereby mutually agree as follows:

1. Premises. The STATE is the owner of and has jurisdiction, authority, control and possession of those certain parcels of land described in Exhibit "E", Page ____ of the Master Agreement (hereinafter referred to as the "Premises").

2. Grant of Use and Occupancy Rights.

- a. The STATE hereby grants the CITY the joint right to use and occupy, on a non-exclusive basis, including surface, subsurface, and air space property, such portion of the Premises as shall be necessary to allow the construction, operation, and maintenance of the PROJECT for the life of the Honolulu Rail Transit Project or for seventy-five (75) years or sooner termination, whichever occurs first.
- b. The location and extent of the Premises which may be utilized for PROJECT facilities, and the scope and nature of such use, shall be governed by the as-built drawings.

3. Right to Construct the PROJECT. The STATE grants to the CITY and its Contractors the right to construct and maintain the PROJECT on, within, under, over, and across the Premises. The CITY shall be solely responsible for all costs and expenses incurred in connection with the PROJECT and the maintenance of the PROJECT on the Premises, including, but not limited to, all design, planning, engineering, construction, alteration, and maintenance costs and expenses. The CITY's operation and maintenance responsibilities during PROJECT construction are set forth in Article III of the Master Agreement.

4. Consideration. In consideration for the CITY's right to use and occupy the Premises granted by the STATE to the CITY by this Joint Use and Occupancy Agreement, the CITY agrees as follows:

- a. The CITY agrees to construct, operate, and maintain the GUIDEWAY FACILITY as set forth in this Joint Use and Occupancy Agreement;
- b. The CITY agrees to provide regular service to the general public in the area served by the PROJECT; and
- c. The CITY shall be solely responsible for all costs and expenses incurred in connection with the PROJECT and the operation and maintenance of the PROJECT on the Premises as set forth herein, including, but not limited to, all design, planning, engineering, construction, alteration, and maintenance costs and expenses, including the costs to mitigate relocation of highway facilities, occupants or utilities due to the existence of the PROJECT.

5. Work Permit. The CITY shall request and the STATE shall promptly grant within twenty-one (21) calendar days or a mutually agreed upon time frame a permit for any construction, installation, maintenance, repair, removal, replacement, reconstruction, and upkeep work that affects the safety and/or operations of the STATE Highway within the Premises prior to commencing such work. In the case of an emergency, the STATE may grant the permit after the work remedying the emergency need has been performed.

6. Work Completion. Upon completion of any work performed on, within, under, over, or across the Premises by the CITY and its Contractors, the CITY and its Contractors shall remove all unused or surplus materials, if any, and shall restore the Premises and any other affected areas to a condition reasonably satisfactory and acceptable to the STATE. In addition, the CITY shall provide a warranty for the restoration work for a period of not less than twenty-four (24) months from the date of final inspection and acceptance by the STATE. Such warranty shall be identical to the warranty required by the CITY of the CITY's Contractors for the PROJECT work, a copy of which is attached to the Master Agreement as Exhibit "I" and incorporated by reference, the STATE acknowledges that it has reviewed and by signing this Joint Use and Occupancy Agreement accepts the terms of such warranty, and the warranty shall insure that the CITY shall be responsible for any failure of the restoration work.

7. Ownership of Improvements. Upon satisfactory completion of the fixed guideway improvements constructed pursuant to the PROJECT, the CITY shall accept such fixed guideway improvements as part of the fixed guideway transit system. Upon satisfactory completion of the roadway and related improvements to STATE Highways constructed pursuant to the PROJECT, the STATE shall accept such improvements as the STATE's public improvements.

8. Maintenance of CITY Improvements. The CITY shall, at its sole cost and expense, keep the PROJECT in a safe, clean, sanitary, and orderly condition, including, but not limited to, making all necessary repairs to the PROJECT, and shall not make, permit, or suffer, any waste, strip, spoil, nuisance, or unlawful, improper, or offensive use of the PROJECT.

9. Repair. The CITY shall not damage, undermine, or otherwise destroy any portion of STATE property, including, without limitation, any STATE Highway facilities or improvements situated on or near the Premises or any equipment or appurtenances relating thereto, including, but not limited to, sidewalks, storm drains, drainage systems, and underground utility systems. The CITY shall, at the written direction of the STATE, promptly, at its sole cost and expense, repair, restore, and reconstruct that portion of said STATE property so damaged, undermined, or destroyed, including any and all affected facilities, improvements, equipment, and appurtenances. Repair work shall be designed and constructed in accordance with all applicable STATE and federal standards and requirements.

10. No Obstruction. The CITY shall not construct, replace, repair, or maintain any landscaping or any portion of the PROJECT on, within, under, over, or across the Premises in such a manner as to (a) unreasonably obstruct traffic, (b) obstruct, in any way whatsoever, the sight lines and distances and view corridors along the STATE Highway, except as agreed to by the parties, or (c) otherwise constitute a hazard to users of the STATE Highway, as determined by the STATE.

11. STATE Work Within or Affecting the fixed guideway transit system. If the STATE performs work of any kind on, within, under, over, across, near, or affecting the fixed guideway transit system, the STATE will coordinate such work with the CITY. The CITY shall not prevent the STATE from performing such work, provided, however, that the STATE will take the necessary protective measures to assure that such work does not unreasonably interfere with the CITY's use of the fixed guideway transit system. The STATE must secure approval from the CITY if the proposed STATE work interferes with the operation and/or safety of the fixed guideway transit system.

12. Future Highway Mitigation. The CITY acknowledges that the construction of the GUIDEWAY FACILITY may reduce roadway capacity and potentially affect operations of the STATE corridor along Kamehameha Highway and Nimitz Highway including but not limited to, highway widening, installation of shared lanes, and intersection modifications within its existing right-of-way. The CITY therefore agrees to participate with the STATE in areas that were directly impacted by the PROJECT in the acquisition of land required to accommodate highway improvements at the time when the STATE determines that the improvement work will proceed. The CITY will participate in sharing in the cost and expenses with the STATE in instances where land acquisition is demonstrated to be in excess of the land necessary had the GUIDEWAY FACILITY not been constructed and shall be solely responsible for all costs and expenses in instances where land acquisition is solely due to the construction of the GUIDEWAY FACILITY, including but not limited to, fees associated with the land acquisition and all design, planning, engineering, construction and alteration costs. The CITY also agrees to be solely responsible for any post construction operational traffic mitigations that were a direct result of the PROJECT.

13. Indemnity. Notwithstanding any agreements to the contrary between the Parties, the CITY shall hold harmless, defend, and indemnify the STATE from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses for loss, injury, death, or damage under tort, contract or otherwise, including, but not limited to, claims of property damage, personal injury, or death of persons, and economic loss, whenever such loss, injury,

death, or damage arises out of, is connected with, or related to the CITY's acts, omissions, rights and responsibilities under this Joint Use and Occupancy Agreement, provided, however, that the CITY shall not be responsible for indemnifying the STATE from and against any claims or damages arising out of the negligence or intentional misconduct of the STATE.

14. No Obligation to Third Parties. There are no intended third party beneficiaries to this Joint Use and Occupancy Agreement. It is expressly understood that the enforcement of the terms and conditions of this Joint Use and Occupancy Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the CITY and the STATE, and nothing contained in this Joint Use and Occupancy Agreement shall give or allow any legal or equitable remedy, claim, or right of action by any third person under this Joint Use and Occupancy Agreement. It is the express intention of the parties that any third person who receives benefits under this Joint Use and Occupancy Agreement shall be deemed an incidental beneficiary only.

15. Insurance. The CITY shall procure or cause to be procured and maintained during the term of the Joint Use and Occupancy Agreement, comprehensive general liability insurance, and if necessary, excess liability insurance, with combined single limits of not less than \$5,000,000 for bodily injury and property damage per occurrence, which shall cover all the claims arising out of, connected with, or related to rights and responsibilities under this Joint Use and Occupancy Agreement. Such policy(ies) shall name the STATE as an additional insured. The policies of insurance for the CITY's Contractors working on the PROJECT and GUIDEWAY FACILITY shall name the STATE as an additional insured.

The CITY shall furnish the STATE with evidence that such policy or policies have been issued and are in force, and without notice or demand, furnish like certificate(s) upon each renewal thereof. The CITY shall provide the STATE with thirty (30) days prior written notice of any termination or cancellation of the coverage provided by said policy or policies. The minimum limits of insurance recited herein may be increased by the STATE as the STATE deems necessary in the exercise of sound business judgment. All insurance required herein shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the STATE. This paragraph shall not relieve or release the CITY from its responsibilities under this Joint Use and Occupancy Agreement or limit the amount or degree of the CITY's liability.

The CITY may, at its sole discretion, elect to self-insure any and all insurance it is required to provide hereinabove.

16. Assignment. The CITY's rights under this Joint Use and Occupancy Agreement, in whole or in part, shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except to an agency of government that may assume the rights and obligations of the CITY with respect to the Joint Use and Occupancy Agreement provided that the CITY making such assignment shall continue to be obligated under the terms of the Joint Use and Occupancy Agreement; otherwise the CITY may not assign its interest without the prior written consent of the STATE. In giving any such consent, the STATE will not release the CITY from any liabilities or obligations hereunder.

17. Default.

- a. Notice of default. If the CITY defaults on or otherwise fails to perform the CITY's obligations under this Joint Use and Occupancy Agreement, the STATE will issue a written notice of default to the CITY by receipted hand-delivery or certified mail, return receipt requested.
- b. The CITY to Cure Defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to the STATE's reasonable satisfaction within one hundred eighty (180) calendar days of the date of the STATE's written notice to the CITY or such further time as may be authorized by the STATE in writing. The CITY's failure to construct the PROJECT in substantial accordance with the plans and specifications accepted by the STATE shall be deemed a default of this Joint Use and Occupancy Agreement.
- c. STATE Remedies for Failure to Cure. If the CITY fails to cure said defaults or failures to perform within the required time period, the STATE itself may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in performing said cure or remedy to the CITY, who shall promptly pay said costs and expenses to the STATE upon receiving notice from the STATE. If the CITY defaults or fails to perform as required under this Joint Use and Occupancy Agreement, the State shall be entitled to all remedies available under this Joint Use and Occupancy Agreement and by law, which remedies shall be cumulative and not exclusive.

18. Abandonment. This Joint Use and Occupancy Agreement and all of the CITY's rights hereunder shall terminate, without any action on the part of the STATE, in the event of non-use or abandonment by the CITY of the Premises, or any portion thereof, for a continuous period of five (5) years.

19. Termination. This Joint Use and Occupancy Agreement shall not be terminated or cancelled in whole or in part until the expiration of the life of the PROJECT or seventy-five (75) years, whichever occurs first, except as provided in paragraph 18 (Abandonment). Any termination or cancellation of this Joint Use and Occupancy Agreement, in whole or in part, shall not relieve the CITY of its obligations to indemnify, defend and/or hold harmless the STATE pursuant to paragraphs 13 (Indemnity) and 20 (Hazardous Materials) herein with respect to any obligations arising prior to such termination or cancellation of all or a portion of this Joint Use and Occupancy Agreement.

20. Hazardous Materials.

- a. STATE pre-approval required. The CITY shall not, without the written prior approval of the STATE, the exercise of which approval is in the sole

and absolute discretion of the STATE, cause or permit the escape, disposal, discharge, or release of any hazardous materials except as permitted by law. The CITY shall not allow the storage or use of such materials in any manner not sanctioned by law or by the standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto and/or into the Premises any such materials except to use in the ordinary course of the CITY's business, and then only after written request is made to the STATE identifying such materials and upon the STATE's written consent, which consent may not be unreasonably withheld. As used in this paragraph 20, the "presence, escape, disposal, discharge, or release of hazardous materials" includes, but is not limited to, oil, fuel, and polychlorinated biphenyl (PCB) spillage or leakage, improper waste oil disposal, or pollution of any water attributable to the CITY's (a) operations and activities on or connected with the Premises or (b) use and occupancy of the Premises.

- b. The CITY's best knowledge and belief. If any lender or governmental agency shall ever require testing to ascertain whether or not the CITY has caused or permitted the escape, disposal, discharge, or release of hazardous materials, then the CITY shall be responsible for the reasonable costs thereof. Hazardous materials pre-existing on the CITY MAINTAINED STATE HIGHWAYS shall be administered in accordance with Article III of the Master Agreement (the CITY MAINTAINED STATE HIGHWAYS are defined in the Master Agreement and more specifically delineated in Exhibit "C" of the Master Agreement). The CITY shall execute affidavits, representations and the like from time to time concerning the CITY's best knowledge and belief regarding the presence of hazardous materials on, within, or under the CITY MAINTAINED STATE HIGHWAYS and/or the escape, disposal, discharge, or release of hazardous materials therefrom.
- c. Indemnity. Notwithstanding any agreements to the contrary between the Parties, the CITY shall hold harmless, defend, indemnify and insure the STATE as an Additionally Named Insured where appropriate, including, but not limited to, under any CITY excess policies of insurance and when the CITY is named as an Additionally Named Insured under policies of insurance provided by its Contractors, from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses for loss, injury, death, or damage under tort, contract or otherwise, including, but not limited to, claims of property damage, personal injury, or death of persons, and economic loss, whenever such loss, injury, death, or damage arises out of, is connected with, or related to Hazardous Materials as a result of the PROJECT located on CITY MAINTAINED STATE HIGHWAYS.
- d. "Hazardous materials" definition. For the purposes of this Joint Use and Occupancy Agreement, "hazardous materials" shall mean any pollutant,

toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Federal Clean Water Act, all as amended, or any other federal, State, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

- e. The CITY's clean-up obligation. Upon termination of this Joint Use and Occupancy Agreement, the CITY shall, at the CITY's sole cost and expense, clean up and decontaminate the Premises and remove all hazardous materials therefrom, including, without limitation, clean-up of surface and ground waters to the extent practicable, making the soil free and clear of all contaminants and hazardous materials. The CITY shall not be responsible for any hazardous materials pre-existing on the Premises prior to the execution of the Joint Use and Occupancy Agreement or which intrudes into the Premises from activities unrelated to the CITY or the PROJECT.
- f. Protection of waters. The CITY shall maintain and employ debris, pollution, and contamination control measures, safeguards, and techniques to prevent debris, pollution, or contamination to ocean waters, streams, or waterways resulting from the activities or operations of the CITY, and the CITY's invitees and agents on, within, under, over, across, through, or connected with the Premises, and shall take prompt corrective action upon actual notice of the event of such pollution or contamination to promptly remove the cause of such pollution or contamination, and shall immediately clean the Premises and affected areas and surrounding waters of such pollutant or contaminant and restore to the STATE's reasonable satisfaction the areas affected by such pollution or contamination, all at the CITY's own cost and expense.

21. End of the Joint Use and Occupancy Agreement. Prior to the expiration of the life of the PROJECT or seventy-five (75) years, whichever occurs first, the Parties agree to negotiate a new Joint Use and Occupancy Agreement to allow the continued operation and maintenance of the PROJECT on the Premises.

22. Removal of the PROJECT. Upon the expiration of the life of the PROJECT or seventy-five (75) years, whichever occurs first, and if a new Joint Use and Occupancy Agreement has not been agreed to by the Parties as provided under paragraph 21 (End of the Joint Use and Occupancy Agreement), or upon abandonment as provided in paragraph 18 (Abandonment), the CITY shall, at the CITY's sole cost and expense:

- a. Remove and Restore. Remove any and all portions of the PROJECT installed or constructed on, within, under, over, or across the Premises and any improvements, equipment, facilities, components, and appurtenances relating thereto and restore the Premises to the reasonable satisfaction of

the STATE to a condition equal to current standards or as it existed prior to the commencement of this Joint Use and Occupancy Agreement. If the CITY fails to restore the Premises to a condition reasonably satisfactory to the STATE, the STATE shall have the right to charge the CITY, and the CITY shall be solely responsible for, any and all reasonable costs and expenses incurred by the STATE in completing and accomplishing such restoration, including, but not limited to, any costs the STATE incurs in removing and disposing of the CITY's property; or

- b. STATE's Option. At the STATE's option, abandon in place the PROJECT and any improvements, equipment, facilities, components, and appurtenances relating thereto; provided, however, that such termination or cancellation shall not relieve the CITY of its obligations to indemnify, defend, and/or hold harmless the STATE pursuant to paragraphs 13 (Indemnity) and 20 (Hazardous Materials) herein with respect to any such obligations arising prior to such termination or cancellation of all or a portion of this Joint Use and Occupancy Agreement.

23. Compliance with Laws. The CITY, at all times during the term of this Joint Use and Occupancy Agreement, shall comply with and observe all of the requirements of all Federal, STATE, and CITY laws, statutes, ordinances, rules, and regulations now in force or which may hereafter be in force, including, but not limited to, all laws and regulations applicable to the use of areas within the highway right-of-way and/or Federal-aid Highways.

24. Binding Effect. All provisions contained in this Joint Use and Occupancy Agreement shall be binding upon and inure to the benefit of the respective parties, their successors and permitted assigns, and officers, agents, and employees or any person acting for and on their behalf.

25. Singular, Plural, Gender. All words used herein in the singular number shall extend to and include the plural. All words used in a gender shall extend to and include all genders.

26. Severability. The portions of this Joint Use and Occupancy Agreement shall be severable, and any invalidity, unenforceability, or illegality of any provision or provisions of this Joint Use and Occupancy Agreement shall not affect any other provision or provisions of this Joint Use and Occupancy Agreement, and each term or provision of this Joint Use and Occupancy Agreement shall be construed to be valid and enforceable to the full extent permitted by law.

27. Headings. The headings and captions herein are for convenience or reference only and are not intended to fully describe, define, or limit the provisions of this Joint Use and Occupancy Agreement to which they may pertain.

28. Drafting of Agreement. The parties expressly acknowledge that this Joint Use and Occupancy Agreement is the product of mutual negotiations; that each has had ample opportunity to read the Joint Use and Occupancy Agreement; that each has had any questions or concerns completely explained by independent counsel and is satisfied that this Joint Use and Occupancy Agreement accurately conveys the meanings and intents it chooses to be bound by; and, it is expressly agreed that neither party shall be construed to be the primary drafter thereof.

29. Survivability. All obligations arising prior to termination of this Joint Use and Occupancy Agreement, all obligations of the parties to be completed following termination of the Joint Use and Occupancy Agreement, and all paragraphs of this Joint Use and Occupancy Agreement allocating responsibility or liability between the parties shall survive the termination of this Joint Use and Occupancy Agreement.

30. Entire Agreement; Amendment. This writing embodies the whole agreement and understanding of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Joint Use and Occupancy Agreement shall supersede all previous communications, representations, or agreements either verbal or written, between the parties hereto. This Joint Use and Occupancy Agreement cannot be modified except by an instrument, in writing, signed by each of the Parties.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed the day and year first above written:

CITY AND COUNTY OF
HONOLULU

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

By: Michael D. Formby, Director
Department of Transportation Services
City and County of Honolulu

By: Glenn M. Okimoto, Ph.D.
Director, Department of Transportation
State of Hawaii

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

By: Nelson H. Koyanagi, Jr., Director
Department of Budget and Fiscal Services

Deputy Attorney General

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel

EXHIBIT "D"

AIRPORT SPECIAL PROVISIONS

THESE AIRPORT SPECIAL PROVISIONS ("ASP") are attached to and made a part of that certain Master Agreement for the Honolulu Rail Transit Project (the "Master Agreement"), dated _____, by and between the STATE OF HAWAII, by its Director of Transportation, whose principal place of business and mailing address is 869 Punchbowl Street, Honolulu, Hawaii, 96813, hereinafter referred to as the "STATE," and the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, hereinafter referred to as the "CITY". The STATE and the CITY collectively, are the "Parties," and individually a "Party," all as governed by the context in which such words are used.

WITNESSETH THAT:

WHEREAS, the CITY, by the Honolulu Authority for Rapid Transportation ("HART"), a semi-autonomous agency of the CITY, is constructing a mass transit system known as the Honolulu Rail Transit Project (HRTTP) which includes the Airport Guideway Section, as described in Article I and Exhibit "A" of the Master Agreement;

WHEREAS, the CITY has identified certain lands and facilities owned by the STATE Airports Division ("STATE") as depicted in the most current Airport Layout Plan, Exhibit "B" of the Master Agreement (hereinafter "AIRPORT LANDS") at Honolulu International Airport (hereinafter "AIRPORT") needed for the Airport Guideway Section of the HRTTP (the "PROJECT"), which AIRPORT LANDS are under the jurisdiction, authority, and control of the STATE;

WHEREAS, the Parties recognize that the alignment of the PROJECT over AIRPORT LANDS will impact and constrain the STATE's current and future ability to use certain AIRPORT LANDS for airport and aviation-related purposes;

WHEREAS, the STATE understands that the PROJECT scope of work affecting AIRPORT LANDS consists of utility relocations, foundations, columns, guideways, an airport transit station and connectors, Traction Power Sub-Station, and any other facilities necessary for the complete operation and maintenance of the PROJECT;

WHEREAS, the CITY agrees to construct, operate and maintain the PROJECT in such a way as to minimize the impact of the PROJECT on the STATE's current and future operations;

WHEREAS, the Parties to this ASP agree that when the terms contained in the Master Agreement do not adequately address the specific use and occupancy of AIRPORT LANDS impacted by the PROJECT and in the event of any conflict between the terms of the Master Agreement and this ASP, the terms of this ASP shall prevail;

WHEREAS, it is in the public interest for the STATE to permit the construction, operation and maintenance of the PROJECT on and over AIRPORT LANDS subject to the conditions herein; and

WHEREAS, the STATE does not object to granting the CITY's joint use and occupancy rights over the certain AIRPORT LANDS, provided the CITY complies with the terms and conditions set forth herein;

NOW, THEREFORE, in and for the consideration of the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound thereby, the Parties hereby mutually agree as follows:

1. Airport Premises. The STATE is the owner of and has jurisdiction, authority, control and possession of those AIRPORT LANDS depicted in Exhibit "E", page 3, of the Master Agreement. Exhibit ASP-1, attached to this ASP, shows the PROJECT situated over AIRPORT LANDS in relation to existing STATE facilities and planned near-term projects at the Airport (hereinafter referred to as the "Airport Premises").

2. Grant of Use and Occupancy Rights. The STATE grants the CITY the joint right to enter, use and occupy, on a non-exclusive basis, including surface, subsurface, and airspace property, such portion of the Airport Premises as shall be necessary to allow the construction, operation, and maintenance of the PROJECT for the life of the Project or for sixty-five (65) years plus an additional period of time to be negotiated between the Parties, or sooner termination, whichever occurs first.

- a. In connection with the grant of entry, use and occupancy to the CITY, the CITY shall obtain from the STATE, a non-exclusive easement for the construction, operation and maintenance of the PROJECT. The easement document shall contain the standard terms and conditions of the STATE's most current grant of easement form, as may be amended from time to time and subject to any other terms and conditions as may be prescribed by the Board of Land and Natural Resources and the STATE to best serve the interest of the STATE. The CITY shall provide survey maps and descriptions of the non-exclusive easement area in accordance with STATE Department of Accounting and General Services Office of Land Survey standards. The CITY shall process and obtain all subdivision approvals for the non-exclusive easement.
- b. The location and extent of the Airport Premises which may be utilized for the PROJECT, and the scope and nature of such use, shall be governed by the as-built drawings of the PROJECT, and as approved by the STATE.
- c. There is hereby reserved to the STATE, its successors and assignees, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the PROJECT, together with the right to cause in

said airspace such noise as may be inherent in the operation of aircraft, now or hereafter used for navigation of, or flight in the air, using said airspace, or landing at, taking off from or operating at the Airport;

- d. The CITY agrees that the PROJECT shall comply with all current Transportation Security Administration (hereinafter "TSA") and Federal Aviation Administration (hereinafter "FAA") rules and regulations, and any subsequent additions and/or amendments enacted during the term of the Master Agreement. The CITY agrees that the CITY shall not be grandfathered under the TSA and FAA rules and regulations that are in effect at the time of planning, design and construction of the PROJECT, and shall be responsible for all costs of bringing the PROJECT into compliance with any subsequent additions and/or amendments to the TSA and FAA rules and regulations during the life of the Master Agreement.

3. Right to Construct, Operate and Maintain the PROJECT. The STATE grants to the CITY and its Contractors the right to construct, operate and maintain the PROJECT on, within, under, over, and across the Airport Premises subject to the following:

- a. The CITY shall be solely responsible for all costs and expenses incurred in connection with the PROJECT on the Airport Premises, including, but not limited to, all design, planning, engineering, land acquisition, construction, alteration, and maintenance costs and expenses.
- b. The STATE shall approve, in writing, all design bid packages for the construction of the various components of the PROJECT, which written approval shall not be unreasonably withheld. The CITY agrees and shall comply with the STATE's request that the CITY include within the CITY's bid packages, that certain portions of the PROJECT must be phased in such a manner as to avoid damaging, destroying, and/or demolishing any of the STATE's newly constructed facilities and improvements.
- c. The CITY realizes that the PROJECT's proposed column locations are in close proximity to Airport roadways and facilities, accessible to the public, and within the Air Operations Area as defined by the STATE (hereinafter "AOA") and associated Ground Support Equipment and vehicles. The CITY shall obtain the STATE's comment on the location of the proposed column locations so that the PROJECT does not further restrict or limit existing and future access and use of AIRPORT LANDS. If the CITY is not able to adequately address such comments, then the CITY shall help mitigate the loss of access and use of AIRPORTS LANDS. In addition, the CITY's Project design shall include all necessary measures to prevent damage and vandalism to the columns, and agrees that the STATE shall not be held liable for any and all damage or vandalism to the columns.

- d. The CITY realizes that the PROJECT requires certain existing utilities to be relocated or new utilities installed specifically for the PROJECT. The CITY shall provide the following:
 - i. For utilities within AIRPORT LANDS providing service outside of the Airport (i.e. Army Signal Corps Line, Fuel Lines, etc.), a Land Court Designation of Easement together with a Land Court Grant of Easement. Depending on the extent of the relocation of a utility facility, either an amended easement document or cancellation and issuance of a new easement document will be prepared by the CITY. The CITY shall process and obtain all subdivision approvals and recordation for the designation or abandonment of easements.
 - ii. For utilities within AIRPORT LANDS providing service to the Airport, a Land Court Designations of Easement and Land Court Grants of Easement will not be required, but the CITY shall provide the STATE with the as-built drawings accurately reflecting the relocation of any utilities.
 - iii. For utilities within AIRPORT LANDS that will be brought in to exclusively provide service to the PROJECT, the CITY shall prepare new easements, metes and bounds (and/or Land Court) descriptions and maps for the STATE and State Board of Land and Natural Resources' approval using STATE generated grant of easement templates. The CITY shall process and obtain all subdivision approvals for the designation of easements.
 - iv. For utilities being relocated outside AIRPORT LANDS onto private property not under STATE jurisdiction, the CITY shall prepare a Land Court Designation of Easement together with a Land Court Grant of Easement regardless if the utilities are within AIRPORT LANDS providing service to the Airport. The CITY shall process and obtain all subdivision approvals and recordation for the designation of easements.
- e. The CITY and its Contractors agree to comply with all STATE construction policies, including but not limited to:
 - i. STATE Construction Specifications;
 - ii. Section C (Construction Site Runoff Control Program) and Section D (Post-Construction Storm Water Management) of the STATE Storm Water Management Program Plan (SWMPP); and
 - iii. Any other policies required of STATE contractors.

- f. The CITY understands that the STATE will allow construction to start on AIRPORT LANDS recognizing that the CITY must comply with items b, c, d, and e above.
- g. The CITY understands that STATE operations shall have priority over the construction of the PROJECT, and the STATE has the authority to issue stop work directives at the STATE's discretion that compromises Airport security and/or impacts Airport daily operation.
- h. The CITY realizes that the PROJECT is in close proximity to Airport roadways and facilities, accessible to public areas, and within the current and future AOA. The CITY understands that the CITY and its Maintenance Contractors shall be required to obtain AOA badges and coordinate with the STATE to obtain approval prior to the commencement of any maintenance work to minimize impacts to Airport operations.

4. Consideration. In consideration of the CITY's right to use and occupy the Airport Premises, the CITY agrees as follows:

- a. That the PROJECT will be publicly owned by the CITY, and will provide regular service at the Airport to the general public using the PROJECT's transit station to be located on the Airport Premises and Pedestrian Connectors (as defined below);
- b. To pay the STATE one-dollar (\$1.00) per year, subject to approval from FAA, for the initial 65-year term for the use of AIRPORT LANDS for the PROJECT including but not limited to the Airport transit station and Pedestrian Connectors, consistent with the FAA Federal Register Policy and Procedures ("Airport Revenue Use Policy") concerning the Use of Airport Revenue.
- c. To be solely responsible for all costs and expenses incurred in connection with the direct PROJECT impacts during the construction of and for the operation and maintenance of the PROJECT on existing and future Airport Premises as set forth herein, including, but not limited to, all design, planning, engineering, land acquisition, construction, alteration, and maintenance costs and expenses, including:
 - i. those additional costs incurred by the STATE which are over and beyond the STATE's typical design and construction costs of relocating/replacing facilities to mitigate the relocation and/replacement of existing impacted STATE facilities, occupants, tenants and users and utilities due to the existence of the PROJECT, and

- ii. those additional costs which are over and beyond the STATE's typical design and construction costs associated with future development of, and facilities on AIRPORT LANDS necessary for (1) the safe and efficient use of navigable airspace by aircraft with respect to the safety of persons and property on the ground and (2) efficient use of the AOA that could be impacted by the PROJECT in areas preserved and designated for future STATE tenants requiring direct access to the AOA, including but not limited to roadways, cargo/freight forwarding operators, flight kitchen facilities, and screening facilities such as those for animal and plant health inspection service purposes.
- d. To allow unrestricted access (i.e. pedestrian, vehicles, aircraft, and aircraft ground support equipment) for future tenants requiring direct access to future AOA on those AIRPORT LANDS bisected by the PROJECT between Aolele Street and Ualena Street (**Exhibit ASP-2**).
- e. The CITY will work with the STATE to grant exemptions from development standards and construction of improvements or structures under or near the PROJECT (including within the maintenance easement areas) that is on existing or future AIRPORT LANDS (i.e exemption from building setback requirements to allow the STATE to construct future facilities on AIRPORT LANDS being impacted by the PROJECT which will maximize the operational efficiency). The STATE shall provide the CITY for review and approval of such plans (both temporary and permanent) to be constructed under or near the PROJECT, and the CITY shall not unreasonably withhold approval of such plans.

5. Airport Transit Station and Pedestrian Connectors to Airport Facilities.

- a. The CITY agrees to plan, design, construct, and maintain the structural integrity, at its sole expense, the Airport Transit Station and the Pedestrian Connectors from the Airport Transit Station to the Airport's passenger terminals. The Pedestrian Connectors shall include the walkways or pathways and all associated improvements through the Airport parking garages, required to separate PROJECT users from vehicles parked and operating within the parking garages.
- b. The STATE shall approve the design of the Airport Transit Station and Pedestrian Connectors to provide the shortest and most intuitive path to the Airport's passenger terminals. This approval shall not be unreasonably withheld by the STATE.
- c. The STATE shall have the right to all advertising, vending, and other revenues of any kind generated by the CITY, within the Airport Transit Station and the Pedestrian Connectors, excluding fare box revenues.

- d. The CITY has an operations and maintenance contract with its core systems contractor, and pursuant thereto will provide janitorial and maintenance services within the Airport Transit Station and any connection to the station such as the Pedestrian Connectors on AIRPORT LANDS. The CITY shall work with the STATE, TSA, and FAA to include appropriate safety and security protocols in the CITY's Safety and Security Plans specific to the Airport Transit Station including but not limited to closure and securing of the Airport Transit Station access points and on-site personnel requirements. The CITY will amend its level of janitorial, security or maintenance services as needed if the State demonstrates adverse impact on the STATE's ability to ensure performance of similar services in area(s) near or connected to the station and guideway system.
- e. The CITY agrees that the theme and design for the Airport Transit Station and Pedestrian Connectors on AIRPORT LANDS and facilities will be consistent and compatible with the themes and designs of the STATE's existing and future facilities. To ensure appropriate coordination in this regard, the CITY will continue to include the STATE in the development of the station theme and design and allow the STATE the opportunity to provide timely comments as part of the design process.

6. Work Permits on AIRPORT LANDS. Prior to commencing any work on the PROJECT, the CITY shall request and the STATE will grant, within twenty-one (21) calendar days, or a mutually agreed upon time frame, of the date of CITY's written request, permits for any construction, installation, maintenance, repair, removal, replacement, reconstruction, and upkeep work within the Airport Premises. In the case of an emergency, the STATE may grant a permit after the work remedying the emergency need has been performed. Exhibit ASP-3 attached hereto describes the process for the application and grant of such permits by the STATE.

7. Work Completion. Upon completion of any work performed on, within, under, over, or across the Airport Premises by the CITY and its Contractors, the CITY and its Contractors shall remove all unused or surplus materials, if any, and shall restore the Airport Premises and any other affected areas, including landscaped areas, in as good or better condition as existed before the commencement of the construction, installation, maintenance, repair, removal, replacement, reconstruction and upkeep work, all subject to the STATE's approval. In addition, the CITY shall warrant all such restoration work, for a period of not less than twenty-four (24) months from the date of final inspection and acceptance by the STATE. Such warranty shall be identical to the warranty required by the CITY of the CITY's Contractors for the PROJECT, a copy of which is attached to the Master Agreement as Exhibit "I" and incorporated in this ASP by reference. The CITY acknowledges that the CITY shall be responsible for any failure of the restoration work.

8. Ownership of Improvements. Upon satisfactory completion/restoration by the CITY of any impacted Airport facilities, including roadways, sidewalks, parking facilities, landscaped areas and any other related improvements located on AIRPORT LANDS pursuant to the PROJECT, the STATE agrees to accept such as STATE improvements.

9. Maintenance of CITY Improvements. The CITY shall, at its sole cost and expense, keep the PROJECT, including the Airport Transit Station and the Pedestrian Connectors (including the walkways or pathways and all associated improvements through the Airport parking garages required to separate PROJECT users from vehicles parked and operating within the parking garages) in a safe, clean, sanitary, and orderly condition, consistent with DOTA's Rules and Regulations, including, but not limited to, making all necessary repairs and replacements, and shall not make, permit, or suffer, any waste, strip, spoil, nuisance, or unlawful, improper, or offensive use of the PROJECT located on AIRPORT LANDS.

10. Repair. The CITY shall not damage, undermine, or otherwise destroy any portion of the AIRPORT LANDS, including, without limitation, any STATE facilities or improvements situated on the Airport Premises or any equipment or appurtenances relating thereto, including, but not limited to, roadways, sidewalks, storm drains, drainage systems, and underground utility systems. The CITY shall, at the written direction of the STATE, promptly, at its sole cost and expense, repair, restore, and reconstruct that portion of said AIRPORT LANDS so damaged, undermined, or destroyed, including any and all affected facilities, improvements, equipment, and appurtenances. Repair work shall be designed and constructed in accordance with all applicable STATE and federal standards and requirements, including those of the FAA.

11. Airport and Airspace Restrictions. The CITY agrees that:

- a. It shall not erect nor permit the erection of any structure, objects of natural growth, or other obstruction on AIRPORT LANDS above a height that is determined by the application of the requirements of 14 CFR Part 77. The STATE reserves the right to remove any offending structure or object, and to cut any offending natural growth, all of which shall be at the expense of the CITY; and
- b. It shall not make use of AIRPORT LANDS in any manner which might interfere with the landing at, and taking off of aircraft from the Airport or which might otherwise constitute an Airport hazard. The STATE reserves the right to cause the removal or abatement of any such interference at the expense of the CITY.

12. STATE Work on AIRPORT LANDS Within or Affecting the PROJECT. If the STATE performs work of any kind on, within, under, over, across, near, or affecting the PROJECT, the STATE will coordinate such work with the CITY. The CITY shall not prevent the STATE from performing such work, provided, however, that the STATE will take the necessary protective measures to assure that such work does not unreasonably interfere with the PROJECT.

13. Indemnity.

- a. Notwithstanding any agreements to the contrary between the Parties, the CITY agrees to be fully liable for any damages and injuries to any person and personal property and shall hold harmless, defend, and indemnify the STATE from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses for loss, injury, death, or damage under tort, contract or otherwise, including, but not limited to, claims of property damage, including aircraft, personal injury, or death of persons, and economic loss, whenever such loss, injury, death, or damage arises out of, is connected with, or related to the CITY's acts, omissions, rights and responsibilities under this ASP, provided, however, that the CITY shall not be responsible for indemnifying the STATE from and against any claims or damages arising out of the negligence or intentional misconduct of the STATE.
- b. The CITY agrees to be fully liable for any damages and injuries to any person and personal property and shall defend, indemnify and hold harmless the STATE from and against any damages to the CITY's guideway system from or relating to aircraft jet blast, and from damages or injuries to any person or personal property, including any aircraft, resulting from falling debris from the guideway system whether it be debris originating from the top of the guideway (e.g. objects) or from the side or underside of the guideway (e.g. spalling) upon AIRPORT LANDS, including but not limited to roadways, automobile parking areas, and any existing and/or future AOA, such as aircraft parking and cargo ramps, aircraft maintenance areas and any other areas intended for the maneuvering and operating of aircraft and ground support equipment.
- c. The CITY agrees to be fully liable for any damages or injuries to any people and personal property, including but not limited to damages to aircraft and consequential damages (e.g. delayed flights), that has clearly been proven to be the result of debris from the guideway system located on AIRPORT LANDS traversing existing and/or future AOA.
- d. Based on information provided to the CITY by the STATE and Hawaiian Airlines, the CITY's consultants have prepared a report evaluating the effects upon the guideway system of jet blast for the largest aircraft that Hawaiian Airlines utilizes or may utilize. The evaluation report is attached to and made a part of this ASP, as **Exhibit ASP-4**. Notwithstanding any of the findings of the report, the CITY agrees to be fully liable for any and all damages and injuries to any person and personal property and shall hold harmless, defend, and indemnify the STATE from and against any damages to any existing and future aircraft of any airplane design group, and operated by any airline carrier, that has

clearly been proven to be the result of debris from the guideway system located on AIRPORT LANDS traversing existing and future AOA.

14. RESERVED.

15. Insurance. The CITY shall procure or cause to be procured and maintained during the term of the ASP, comprehensive general liability insurance, and if necessary, excess liability insurance, with combined single limits of not less than \$5,000,000 for bodily injury and property damage per occurrence, which shall cover all the claims arising out of, connected with, or related to rights and responsibilities under this ASP. Such policy(ies) shall name the STATE as an additional insured. The policies of insurance for the CITY's Contractors working on the PROJECT shall name the STATE as an additional insured.

The CITY shall furnish the STATE with evidence that such policy or policies have been issued and are in force, and without notice or demand, furnish like certificate(s) upon each renewal thereof. The CITY shall instruct the issuer to provide the STATE directly a thirty (30) days prior written notice of any termination or cancellation of the coverage provided by said policy or policies. The minimum limits of insurance recited herein may be increased by the STATE as the STATE deems necessary in the exercise of sound business judgment. All insurance required herein shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the STATE. This paragraph shall not relieve or release or limit the amount or degree of the CITY's liability.

The CITY may, at its sole discretion, elect to self-insure any and all insurance it is required to provide herein.

16. Assignment. The CITY's rights under this ASP, in whole or in part, shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except to an agency of government that may assume the rights and obligations of the CITY with respect to the ASP provided that the CITY making such assignment shall continue to be obligated under the terms of the ASP; otherwise the CITY may not assign its interest without the prior written consent of the STATE. In giving any such consent, the STATE will not release the CITY from any liabilities or obligations hereunder.

17. Default.

- a. Notice of default. If the CITY defaults on or otherwise fails to perform the CITY's obligations under this ASP, the STATE will issue a written notice of default to the CITY by receipted hand-delivery or certified mail, return receipt requested.
- b. The CITY to Cure Defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to the STATE's reasonable satisfaction within one hundred eighty (180) calendar days of the date of the STATE's written notice to the CITY or such further time as may be authorized by the STATE in writing. The CITY's failure

to construct the PROJECT in accordance with the STATE's approved plans and specifications shall be deemed a default of this ASP.

- c. STATE Remedies for Failure to Cure. If the CITY fails to cure said defaults or fails to perform within the required time period, the STATE may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in performing said cure or remedy to the CITY, which shall promptly pay said costs and expenses to the STATE upon receiving notice from the STATE. The STATE shall be entitled to all remedies available under this ASP and by law, which remedies shall be cumulative and not exclusive.

18. Abandonment. This ASP and all of the CITY's rights hereunder shall terminate, without any action on the part of the STATE, in the event of non-use or abandonment of the PROJECT by the CITY on the Airport Premises, or any portion thereof, for a continuous period of five (5) years.

19. Termination. This ASP shall not be terminated or cancelled in whole or in part until the expiration of the life of the PROJECT or sixty-five (65) years plus an additional period of time to be negotiated between the Parties, whichever occurs first, except as provided in Paragraph 18 (Abandonment). Any termination, cancellation, or abandonment of this ASP, in whole or in part, shall not relieve the CITY of its obligations to indemnify, defend and/or hold harmless the STATE pursuant to Paragraphs 13 (Indemnity) and 20 (Hazardous Materials) herein with respect to any obligations arising prior to such termination or cancellation of all or a portion of this ASP.

20. Hazardous Materials.

- a. "Hazardous Materials" definition. For the purposes of this ASP, "Hazardous Materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Federal Clean Water Act, all as amended, or any other federal, State, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.
- b. STATE pre-approval required. The CITY shall not, without the written prior approval of the STATE, the exercise of which approval is in the sole and absolute discretion of the STATE, cause or permit the escape, disposal, discharge, or release of any Hazardous Materials except as permitted by law. The CITY shall not allow the storage or use of such materials in any manner not sanctioned by law or by the standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto and/or into AIRPORT LANDS any such

materials except to use in the ordinary course of the CITY's business, and then only after written request is made to the STATE identifying such materials and upon the STATE's written consent, which consent may not be unreasonably withheld. As used in this Paragraph 20, the "presence, escape, disposal, discharge, or release of Hazardous Materials" includes, but is not limited to, oil, fuel, and polychlorinated biphenyl (PCB) spillage or leakage, improper waste oil disposal, or pollution of any water attributable to the CITY's (a) operations and activities on or connected with the PROJECT on Airport Premises or (b) use and occupancy of the AIRPORT LANDS.

- c. The CITY's best knowledge and belief. If any lender or governmental agency shall ever require testing to ascertain whether or not the CITY has caused or permitted the escape, disposal, discharge, or release of Hazardous Materials, then the CITY shall be responsible for the reasonable costs thereof. Hazardous materials pre-existing on AIRPORT LANDS shall be administered in accordance with Article III of the Master Agreement. The CITY shall execute affidavits, representations and the like from time to time concerning the CITY's best knowledge and belief regarding the presence of hazardous materials on, within, or under the AIRPORT LANDS and/or the escape, disposal, discharge, or release of Hazardous Materials therefrom. The CITY acknowledges that Hazardous Materials do exist on certain portions of AIRPORT LANDS, and shall be responsible for all costs to properly remove, dispose and/or abate such materials that the CITY disturbs. The CITY shall not be permitted to dispose of any Hazardous Materials at the STATE's Soil Management Facility.
- d. Indemnity. Notwithstanding any agreements to the contrary between the Parties, the CITY shall hold harmless, defend, indemnify and insure the STATE as an Additionally Named Insured where appropriate, including, but not limited to, under any CITY excess policies of insurance and when the CITY is named as an Additionally Named Insured under policies of insurance provided by its Contractors, from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses for loss, injury, death, or damage under tort, contract or otherwise, including, but not limited to, claims of property damage, including aircraft, personal injury, or death of persons, and economic loss, whenever such loss, injury, death, or damage arises out of, is connected with, or related to Hazardous Materials as a result of the PROJECT located on AIRPORT LANDS.

21. Protection of waters. The CITY shall maintain and employ debris, pollution, and contamination control measures, safeguards, and techniques to prevent debris, pollution, or contamination to ocean waters, streams, or waterways resulting from the activities or operations of the CITY, and the CITY's invitees and agents on, within, under, over, across, through, or connected with the Airport Premises, and shall take prompt corrective action upon actual notice

of the event of such pollution or contamination to promptly remove the cause of such pollution or contamination, and shall immediately clean the Airport Premises and affected areas and surrounding waters of such pollutant or contaminant and restore to the STATE's reasonable satisfaction the areas affected by such pollution or contamination, all at the CITY's cost and expense.

The STATE may also conduct its own inspections of the CITY's Contractors work on AIRPORT LANDS and/or on any property within the STATE's Small Municipal Separate Storm Sewer System (MS4) permit. The STATE shall notify the CITY, in writing, of any STATE non-compliant findings. If the CITY does not correct the non-compliant items within the time specified, or if the non-compliant item(s) is an illicit discharge or if the noted item is a repeat violation, then the STATE will notify the STATE Department of Health ("STATE DOH"). The CITY agrees that any fines levied by the STATE DOH upon the STATE as a result of the CITY's Contractor's work, shall be tendered back to the CITY, regardless if an inspection was undertaken by the STATE. The STATE shall have the authority to issue stop work directives to the CITY's Contractors if the STATE deems the construction site to pose an immediate and significant threat to water quality, human or environmental health, and such occurrence shall be referred to the STATE DOH.

22. End of the ASP. Prior to the expiration of the life of the PROJECT or sixty-five (65) years plus an additional period of time to be negotiated between the Parties, whichever occurs first, the Parties agree to negotiate a new ASP to allow the continued operation and maintenance of the PROJECT on the Airport Premises.

23. Removal of the PROJECT. Upon the expiration of the life of the PROJECT or sixty-five (65) years, as may be extended by negotiation, whichever occurs first, and if a new ASP has not been agreed to by the Parties as provided under Paragraph 22 (End of the ASP), or upon abandonment as provided in Paragraph 18 (Abandonment), the CITY shall:

- a. Remove and Restore. At the CITY's sole cost and expense, remove any and all portions of the PROJECT installed or constructed on, within, under, over, or across the Airport Premises and any improvements, equipment, facilities, components, and appurtenances relating thereto and restore the Airport Premises to the reasonable satisfaction of the STATE, to a condition equal to the then-current standards or as it existed prior to the commencement of this ASP. If the CITY fails to restore the Airport Premises to a condition reasonably satisfactory to the STATE, the STATE shall have the right to charge the CITY, and the CITY shall be solely responsible for, any and all reasonable costs and expenses incurred by the STATE in completing and accomplishing such restoration, including, but not limited to, any costs the STATE incurs in removing and disposing of the CITY's property.
- b. Right to Purchase. City shall offer the STATE the first option to acquire any land and property that the City and/or its successors acquired in

connection with the PROJECT, provided such property is adjacent to or near STATE property (such as areas identified on the Airport Layout Plan as clearance zone, or areas that should be under the STATE's control to prevent future incompatible land uses). At no cost to the STATE, the STATE shall have up to six (6) years to assess and secure funding to acquire any such properties. Conveyance of the properties to the STATE shall be in compliance with, or permitted by, applicable Federal, State, and CITY guidelines, regulations, or laws.

24. Compliance with Laws. The CITY, at all times during the term of this ASP, shall comply with and observe all of the requirements of all Federal, including but not limited to the FAA, STATE, and CITY laws, statutes, ordinances, rules, and regulations now in force or which may hereafter be in force, including, but not limited to, all laws and regulations applicable to the use of areas within AIRPORT LANDS.

25. Binding Effect. All provisions contained in this ASP shall be binding upon and inure to the benefit of the respective parties, their successors and permitted assigns, and officers, agents, and employees or any person acting for and on their behalf.

26. Singular, Plural, Gender. All words used herein in the singular number shall extend to and include the plural. All words used in a gender shall extend to and include all genders.

27. Severability. The portions of this ASP shall be severable, and any invalidity, unenforceability, or illegality of any provision or provisions of this ASP shall not affect any other provision or provisions of this ASP, and each term or provision of this ASP shall be construed to be valid and enforceable to the full extent permitted by law.

28. Headings. The headings and captions herein are for convenience or reference only and are not intended to fully describe, define, or limit the provisions of this ASP to which they may pertain.

29. Drafting of ASP. The Parties to this ASP expressly acknowledge that this ASP is the product of mutual negotiations; that each has had ample opportunity to read the ASP; that each has had any questions or concerns completely explained by independent counsel and is satisfied that this ASP accurately conveys the meanings and intents it chooses to be bound by; and, it is expressly agreed that neither party shall be construed to be the primary drafter thereof.

30. Unique Terms of the ASP. The Parties to this ASP agree that when the terms contained in the Master Agreement do not adequately address the specific use and occupancy of AIRPORT LANDS impacted by the PROJECT and in the event of any conflict between the terms of the Master Agreement and this ASP, the terms of this ASP shall prevail;

31. Survivability. All obligations arising prior to termination of this ASP, all obligations of the parties to be completed following termination of the ASP, and all paragraphs

of this ASP allocating responsibility or liability between the parties shall survive the termination of this ASP.

32. Entire Agreement; Amendment. This writing embodies the whole agreement and understanding of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this ASP shall supersede all previous communications, representations, or agreements either verbal or written, between the parties hereto. The STATE reserves the right, from time to time, to update the ASP to reflect its then-standard policies and procedures applicable to airport tenants and users of AIRPORT LANDS when it relates to the safety, security and operations of the airport and airport system. Such updated ASP is at the sole discretion of the STATE and does not require the other party to sign such ASP. However, when the ASP needs to be updated and such change(s) affects the negotiable term(s) of the ASP, then such ASP cannot be modified except by an instrument, in writing, signed by each of the Parties.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed the day and year first above written:

CITY AND COUNTY OF
HONOLULU

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

By: Michael D. Formby, Director
Department of Transportation Services
City and County of Honolulu

By: Glenn M. Okimoto, Ph.D.
Director, Department of Transportation
State of Hawaii

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

By: Nelson H. Koyanagi, Jr., Director
Department of Budget and Fiscal Services

Deputy Attorney General

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel





Exhibit ASP 3

PERMIT TO PERFORM WORK UPON AIRPORT ROADWAYS

Application Date _____

Application is hereby made to perform the following work and at the location(s) specified below and at no other place.

1. Name of Roadway _____
2. Locations or limits on said roadway _____
3. Work to be performed per attached plans approved by _____ Date _____
☐ Access connection ☐ Utility ☐ Drainage Improvement ☐ Other _____

4. Dates between which work will be performed: _____ to _____
5. General Notes for Construction

- a. All lanes shall be open to traffic when no work is being done under this permit. Only one lane of traffic shall be closed at any other time.
- b. When trenching in pavement areas, safe, non-skl bridging material adequate, to handle all vehicular traffic shall be placed and securely anchored over the trench.
- c. Longitudinal drainage along the roadway shall be maintained.
- d. Duct lines shall have 3 feet minimum cover if no other depth is shown on the approved plan.
- e. No material and/or equipment shall be stockpiled and/or stored within the roadway or right-of-way except at locations approved in writing by the Airport Manager or those shown on the approved plans.
- f. All regulatory, guide and construction signs and barricades shall be of high intensity reflective sheeting.

6. Submittals required

- a. Initial and date utility clearances as checked below. Contractor to also check with all other utility companies etc. for verification of all other utility lines.
☐ Electric Co. _____ ☐ Water Supply _____ ☐ Gas Co. _____
☐ GTE - HAW'N _____ ☐ Sewers _____ ☐ Cable TV _____
☐ AT&T _____ ☐ _____
- b. Proof of State Indemnity
☐ Certificate of Insurance naming the State of Hawaii as an additional insured, having respective minimum coverages for Bodily Injury of Death Per Person; Bodily Injury or Death Per Accident; and Property Damages Per Accident of:
☐ \$ 100,000; ☐ \$ 300,000; ☐ \$ 50,000;
☐ \$ 250,000; ☐ \$ 500,000; ☐ \$ 100,000; 30 day notice of
☐ \$ _____; ☐ \$ _____; ☐ \$ _____; cancellation to the State required.
☐ Federal Non Liability Clause (See Item 13 on following pages of this permit.)
- c. \$ _____ Administrative Fee (Make check payable to: Dept. of Transportation, State of Hawaii)
- d. Performance Bond
☐ \$ _____ : By Bond No. _____; or Other _____
☐ Letter of Guarantee on file ☐ Waived

The applicant hereby agrees that any agreement heretofore made or hereafter to be made, and the covenants and conditions stated on the reverse side hereof shall be binding upon the applicant, the applicants heirs, personal representatives, successors, contractor and assigns. The applicant acknowledges that the applicant has read the completed form, understands its provisions, and agrees to its terms and conditions.

CONTRACTOR: _____ APPLICANT: _____
(Name of applicant whether individual, firm, partnership,

ADDRESS: _____

corporation, governmental agency, etc.)

TELEPHONE NUMBER: _____

(Print Name & Title of Applicant or Authorized Rep)

EMERGENCY NOS:

(1) _____
Name Phone No.

(Signature)

ADDRESS: _____

(2) _____
Name Phone No.

TELEPHONE NO.: _____

=====

PERMIT NO. _____

DATE: _____

Permission to perform the above described work at the location(s) state in items 1 and 2 between the dates set forth in item 4 of the application is hereby granted. The applicant shall notify the issuing office at least five (5) working days before commencing work. Any extension of completion date must be approved in writing by the Airport Manager. This permit expires if work is not stated within 90 days of issuance date.

Airport Manager

IN CONSIDERATION OF A PERMIT BEING ISSUED TO THE APPLICANT, THE APPLICANT AGREES AS FOLLOWS:

Rules & Regulations

1. To install, provide, and maintain all traffic control devices in accordance with the Administrative Rules Governing the Use of Traffic Control Devices at Work Sites on or Adjacent to Public Streets and Highways as adopted by the Director of Transportation, and the FHWA Manual on Uniform Traffic Control Devices for Streets and Highways, Part VI, Traffic Controls for Highway Construction and Maintenance Operations dated 1984.
2. To safeguard and facilitate the movement of vehicular and pedestrian traffic in accordance with the Administrative Rules Governing the Design, Construction and Maintenance of Public Streets and Highways as adopted by the Director of Transportation; to place signs or barricades informing motorists or pedestrians of work to be done in a safe manner and to remove same upon completion of work.

Workmanship: Responsibility & Warranty

3. To diligently prosecute the work to completion, in a neat and workmanlike manner, within the dates set forth in said permit.
4. To undertake for a period of one (1) year after the satisfactory completion of such work, any necessary repairs to Airport facilities disturbed by the work performed under said permit; or to pay the actual cost of such repair made by the Department of Transportation.
5. To remove, relocate, replace, reconstruct or adjust, at the applicant's expense, any work or facility constructed or placed by the applicant on or under the right of way of an airport roadway whenever and as often as may be required by the Director or the Director's authorized representative in order to undertake the construction, reconstruction or maintenance of said airport roadway.
6. To keep all facilities installed under said permit in good repair so that the presence of such facility on or under the roadway will in no way impair the use or usefulness of any roadway improvement which may now exist or hereinafter come into existence.
7. To make all repairs in such manner as may be required by Chapter 264, Hawaii Revised Statutes.

State Indemnity

8. To protect, defend, indemnify and save harmless, the State and its agents and representatives, against any claim, liability, suit or action of every manner and description for any injury to or death of persons or for property damage, whenever such injury, death or damage shall be inflicted or caused by the applicant, the applicant's agents, contractors or representatives in connection with the work covered by said permit.
9. To procure, at the applicant's own expense, and keep in force at all times when work permitted under said permit is being done, a policy or policies of public liability and property damage insurance, naming the State as an additional insured, covering the entire work to be done under said permit and for at least the minimum coverages set forth on the reverse side hereof. The State is to be given 30 days written notice of cancellation of said insurance.

10. To supply evidence satisfactory to the State that the required insurance has been procured and is in force prior to commencing the work under said permit.
11. If the death or injury to any person, or the loss or damage to any property, is caused by the United States Government in the course of its use of the property, the liability, if any of the U.S. Government thereafter shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (62 Stat. 869, 982; 28 USC 2671-2680).

Nondiscrimination Covenants

12. No person on the grounds of race, color, religion, sex or national origin shall be excluded from participating in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
13. In the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex or national origin shall be excluded from participating in, denied the benefits of, or be otherwise subjected to discrimination.
14. The applicant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Program of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended.

Agreements

15. To surrender the permit herein applied for and surrender all rights thereunder whenever notified to do so because of a default in any of these conditions agreed above.
16. To keep a copy of said permit in the hands of the working crew for exhibit upon request of any authorized representative of the Department of Transportation.
17. Administrative fee is not refundable under any condition.

GENERAL NOTES FOR TRAFFIC CONTROL PLAN

1. The permittee shall make minor adjustments at intersections, driveways, bridges, structures, etc., to fit field conditions.
2. Cones or delineators shall be extended to a point where they are visible to approaching traffic.
3. Traffic control devices shall be installed such that the sign or device farthest from the work area shall be placed first. The others shall then be placed progressively toward the work area.
4. Regulatory and warning signs within the construction zone that are in conflict with the Traffic Control Plans shall be removed or covered. All signs shall be restored upon completion of the work.
5. Flaggers and/or police officers shall be in sight of each other or in direct communication at all times.
6. When required by the issuing office, the permittee shall install a flashing arrow signal as shown on the Traffic Control Plans.
7. All traffic lanes shall be a minimum of 10 feet wide.
8. All construction warning signs shall be promptly removed or covered whenever the message is not applicable or not in use.
9. The backs of all signs used for traffic control shall be appropriately covered to preclude the display of inapplicable sign messages (i.e., when signs have messages on both faces).
10. At the end of each day's work or as soon as the work is completed, the permittee shall remove all traffic control devices not longer needed to permit free and safe passage of public traffic. Removal shall be in the reverse order of installation.
11. Replace permanent pavement markings and traffic signs upon completion of each phase of work.

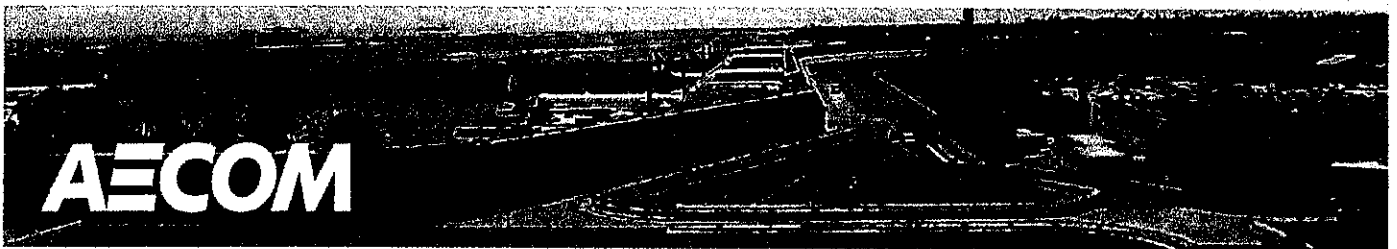
Exhibit ASP 4

MAUKA TERMINAL— AIRCRAFT TAXI STUDY WHITE PAPER REPORT

FOR THE

DESIGN OF THE HONOLULU RAIL TRANSIT PROJECT
AIRPORT SECTION GUIDEWAY AND UTILITIES

July 7, 2013



INTRODUCTION

The purpose of this white paper report is to present our analysis of the Interisland Terminal Mauka Extension project as related to the guideway. Per DOT-AIR plans, dated December 14, 2012, (Attachment A1) the project will include the construction of aircraft tarmac which will be bordered by a 19 foot tall blast wall fence. As shown on Attachment B Structural Plan and Profile sheet, the guideway will traverse the northeast corner of the tarmac with the outer edge extending over by as much as 40-ft and the underside of the guideway at an elevation of approximately 88.8-ft. This portion of the guideway is supported by two piers located behind the blast wall fence. According to DOT-AIR the gates adjacent to this area will accommodate the Airbus 330-300 (Group V) and Boeing 737-800 (Group III). This report documents the analysis of the aircraft movements to and from the proposed Mauka Concourse. The two sections of this report will review Airbus 330-300 and Boeing 737-800 operations and list assumptions made to the analysis as well as conclusions drawn.

A330-300 AIRCRAFT (GROUP V)

The Interisland Terminal Extension – Mauka Concourse can accommodate A330-300 aircraft on the north side concurrently at Gates 72B and 70B.

Assumptions

It is assumed that aircraft will maintain a standard taxilane wingtip clearance of 31 feet and a 25-foot tail clearance from objects. Aircraft will be pushed back with a tug and to the extent practical will be aligned with the exit taxilane centerline. The same taxilane is used for aircraft taxiing to and from the terminal.

Analysis

A330-300 movements along the north side of the Mauka Concourse create dependencies as there is only one taxilane capable of accommodating A330-300 aircraft. Attachment C1 shows the analysis of two aircraft taxiing to their respective Gates (72B and 70B). When the aircraft at Gate 72B is pushed back, there is insufficient apron area (width) to allow for the A330 to be aligned with the taxilane. Once pushed back, the aircraft will taxi out on its own power, first turning to align with the taxilane. The taxi out maneuver will not impact an A330 parked at Gate 70B.

According to a specifications sheet, provided by Hawaiian Airlines, the A330-200 is 59.8-feet tall, Attachment D and per DOT grading plans, the highest tarmac grades are at elevation 18.84, Attachment A2. As shown on Attachment C1 and C2 the tail of an A330 pushing back from Gate 72B will have 36± feet of horizontal clearance and 10 ± feet vertical clearance from the underside of the guideway.

As the A330 pushes back the guideway will be subjected to jet blast reaching speeds of 34 mph and temperatures of 77 degrees Fahrenheit, see Attachment E1 and E2. This wind speed and temperature are no different than normal daily weather conditions, and are well within the normal design service load conditions. Furthermore, the guideway can accommodate service load ambient temperatures up to 100 degrees Fahrenheit and wind speeds up to 100 mph.

Similarly, an A330 at Gate 70B is pushed back, tail to the east. However, at this gate there is sufficient room to align the aircraft on the taxilane.

Conclusion

Using FAA standard taxilane wingtip and tail clearances it is possible to conduct push back and power out maneuvers along the north side of the Mauka Concourse with A330 aircraft without impacting the proposed guideway alignment. It is not uncommon for an aircraft to make a turning maneuver prior to beginning their taxi out of the terminal area and the turns assumed in this analysis are well within the aircraft's safe operating limits.

B737-800 AIRCRAFT (GROUP III)

Four B737-800 aircraft can park at Gates 70A, 71, 72A, and 73 simultaneously.

Assumptions

It is assumed that aircraft will maintain a taxilane wingtip clearance of 22 feet and a tail clearance of 15 feet. In addition, aircraft are maneuvered to avoid conflicts with the proposed blast fence as indicated in Attachment C1 and C2. This is of particular concern at Gate 73, where a straight pushback of the aircraft would result in the blast fence being within the wingtip clearance. Aircraft are maneuvered to minimize interferences between gate parking and taxi movements.

Analysis

This analysis reviews three Group III aircraft taxiing to and being pushed back from Gates 71, 72A and 73. All inbound Group III aircraft will taxi on the southern Group III taxilane and outbound aircraft on the northern Group III taxilane. Operations the two taxilanes can be conducted simultaneously by Group III or smaller aircraft. All aircraft movements were analyzed to meet FAA design standards of 22-foot wingtip clearance between the wingtips of the aircraft and any fixed or moveable object. In addition, all aircraft were analyzed to meet 15-foot tail clearances to fixed or moveable objects.

An aircraft pushing back from Gate 73 will be pushed essentially straight back with slight corrections being made to avoid the jet blast fence within the wingtip clearance areas. Similar to the Group V analysis above, the pushback maneuver retains a tail clearance of 15 feet to a potential blast fence adjacent to the proposed guideway. Pushbacks on Gate 73 allow for the southern Group III taxilane to be utilized by aircraft taxiing to Gates 72A and 71. Upon decoupling of the tug, the aircraft from Gate 73 will turn toward the northern Group III taxilane. During this turning maneuver, aircraft cannot taxi into Gates 72A or 73. While wingtips will remain clear, it is also likely that aircraft would not enter Gate 71 during this turn either.

The aircraft at Gate 72A can be pushed straight back and then turn with the tail east nearly aligning with the northern Group III taxilane centerline. Once the tug is removed, the aircraft will make a slight correction to center on the taxilane and then proceed outbound. Once the aircraft is pushed back, inbound traffic is able to access Gates 71, 72A, and 73 unimpeded.

Similarly to Gate 72A, the aircraft at Gate 71 can be pushed straight back and then turn with the tail east nearly aligning with the northern Group III taxilane centerline. Inbound aircraft are able to access Gates 71, 72A and 73 unimpeded while the tug is decoupling from the aircraft.

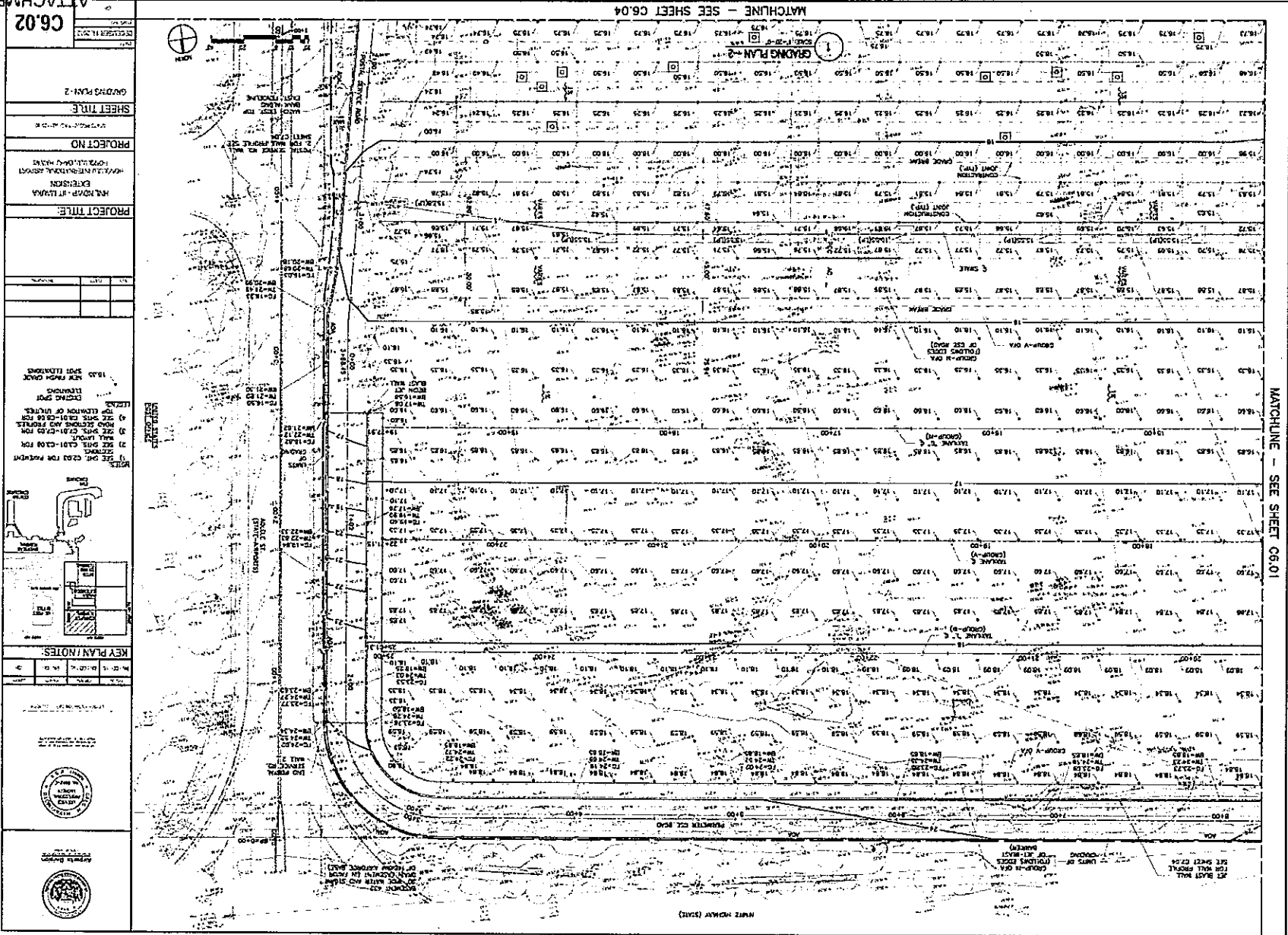
Conclusion

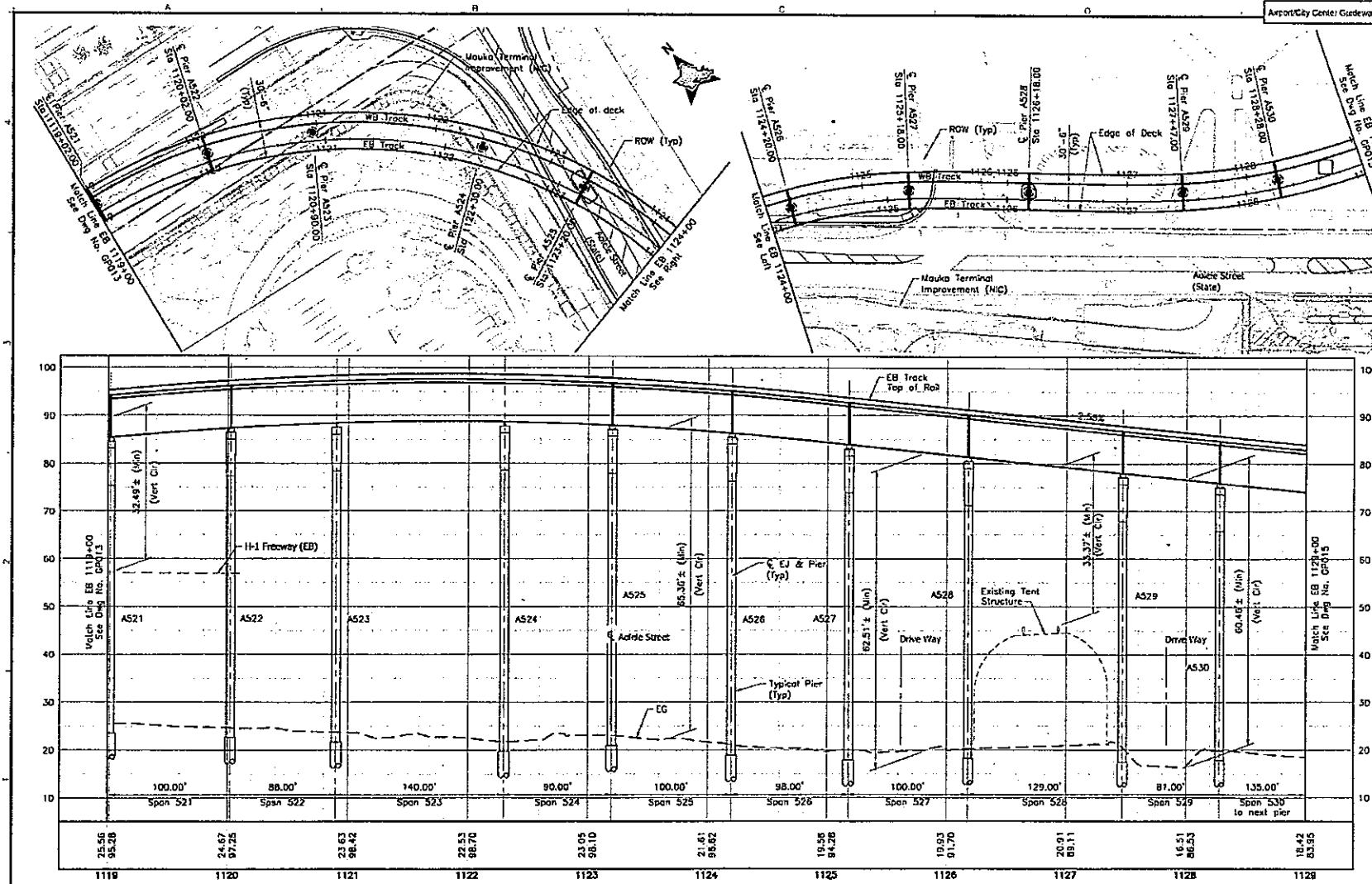
Using FAA standard taxilane wingtip and tail clearances it is possible to conduct push back and power out maneuvers along the north side of the Mauka Concourse with B737 aircraft without impacting the proposed guideway alignment. Again, it is not uncommon for an aircraft to make a turning maneuver prior to beginning their taxi out of the terminal area and the turns assumed in this analysis are well within the aircraft's safe operating limits.

A Boeing 737-800 pushing back from Gate 73 maintains clear of aircraft taxiing to Gate 72A and will maintain a tail clearance to the guideway shadow of approximately 26.75± feet (bottom of guideway is actually 28± feet above the top of tail). This clearance is over 10 feet more than the required minimum FAA standard. During the push-back, there are no interferences of operations with other gates. Once the push-back operations have ceased and the aircraft proceeds to turn to the northern Group III taxilane, the aircraft becomes dependent on aircraft taxiing to Gate 72A. Once straight on the taxilane centerline, it is independent of other aircraft taxiing toward the proposed Mauka Concourse.

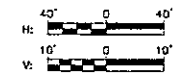
An aircraft pushing back from Gate 72A will push back straight and then turn the tail toward the east until the aircraft is on the centerline of the northern taxilane ready to proceed taxiing forward without assistance of the tug. At the furthest push-back point, while the tug is decoupling, the tail is approximately 26.75± feet from the proposed guideway shadow (bottom of guideway is actually 28± feet above the top of tail). During push-back, no aircraft can taxi to Gates 71 or 73 nor can an aircraft from Gate 71 be pushed back. Once the aircraft is pushed back, its movements are independent of aircraft taxiing to the proposed Mauka Concourse along the southern Group III taxilane.

An aircraft pushing back from Gate 71 will push straight back from its parking position and then turn the tail toward the east until the aircraft is on or nearly on the centerline of the northern taxilane. Once the aircraft is pushed back, its movements are independent of aircraft taxiing to the proposed Mauka Concourse along the southern Group III taxilane.

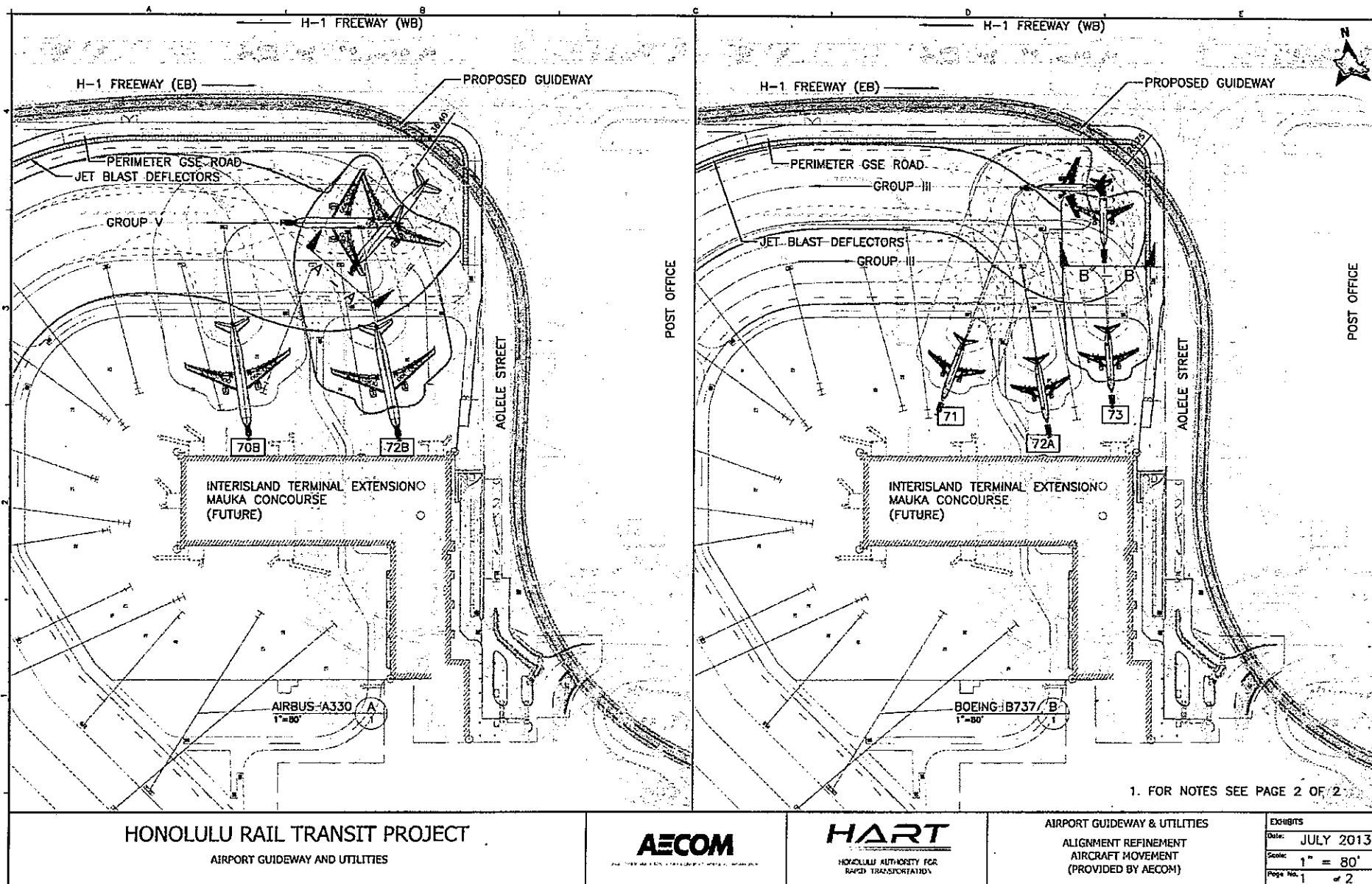


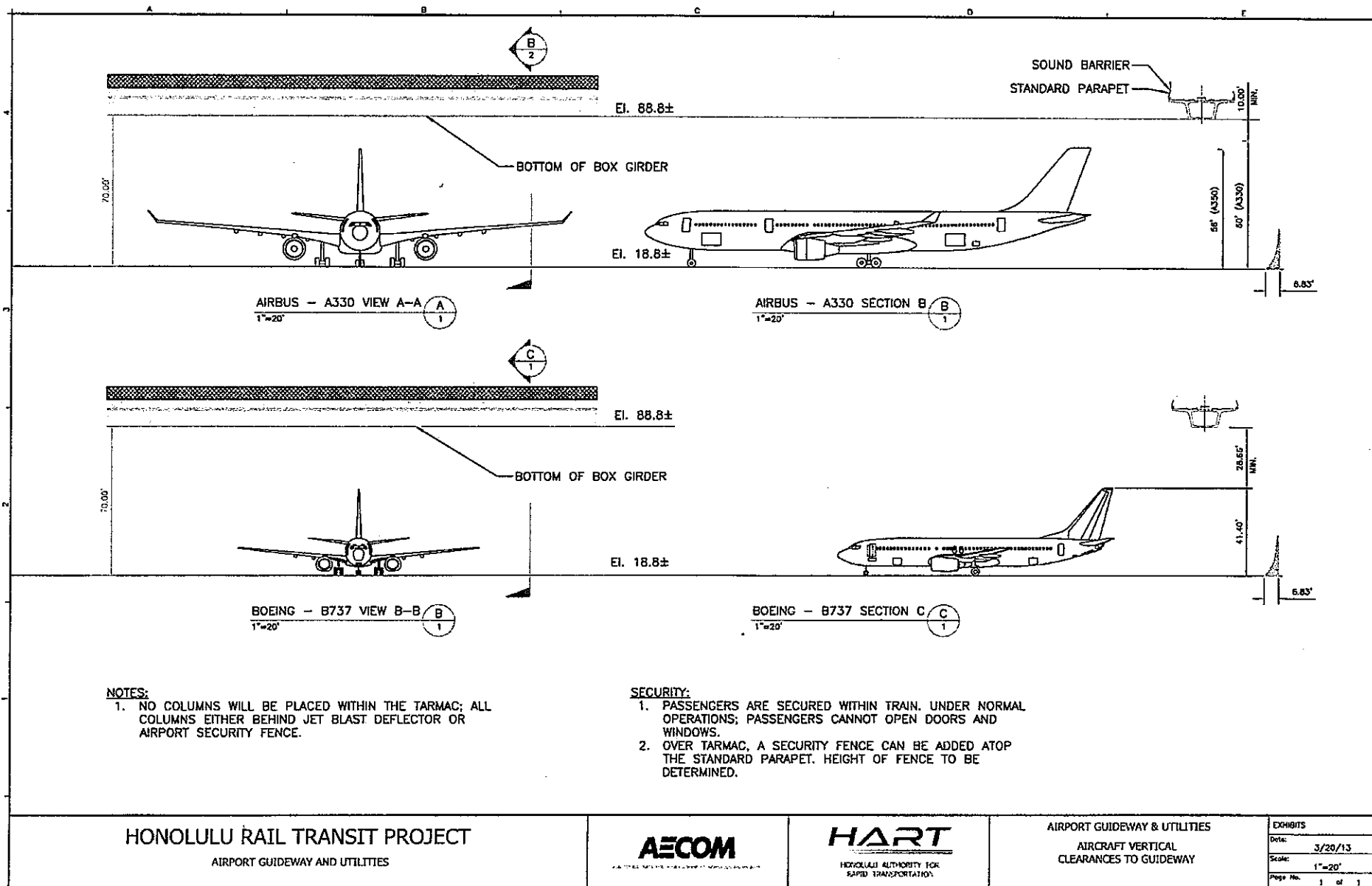


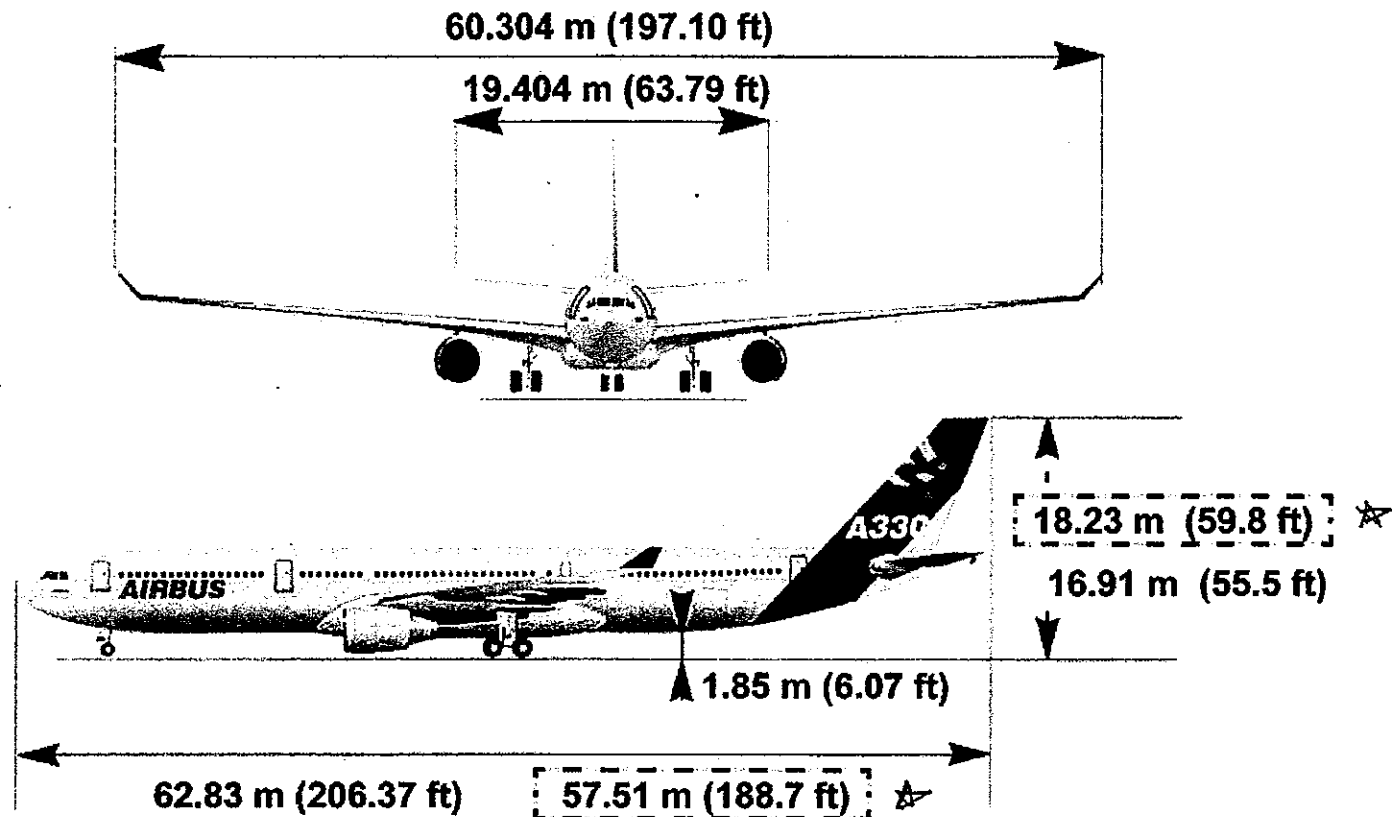
- NOTES:**
1. For General Structural Notes, Symbols and Abbreviation, see Dwg No. SC001 and SC002.
 2. For Roadway Improvements, see "Civil Roadway Construction Plans".
 3. For Legend, see Dwg No. GP001.
 4. All horizontal dimensions are measured along EB Track.
 5. For vertical curve information, see Track Alignment Plan and Profile.
 6. EG line is taken along EB Track.



INTERIM DESIGN		Design: N Harris Draw: C. Lee Checked: S. Sanger Approved: W. Jordan Date:		HONOLULU RAIL TRANSIT PROJECT HONOLULU AUTHORITY FOR RAPID TRANSPORTATION AECOM 1001 Bishop Street, Suite 1000 - Honolulu, HI 96813 For reduced prints, original page size is inches		AIRPORT & CITY CENTER GUIDEWAY STRUCTURAL PLAN & PROFILE EB 1119+00 TO EB 1129+00		Contract No. HRT-1200339/149 File ACG-004-GP014 Drawing No. GP014 Rev B Scale: 1"=40'H, 1"=10'V Page No. of	
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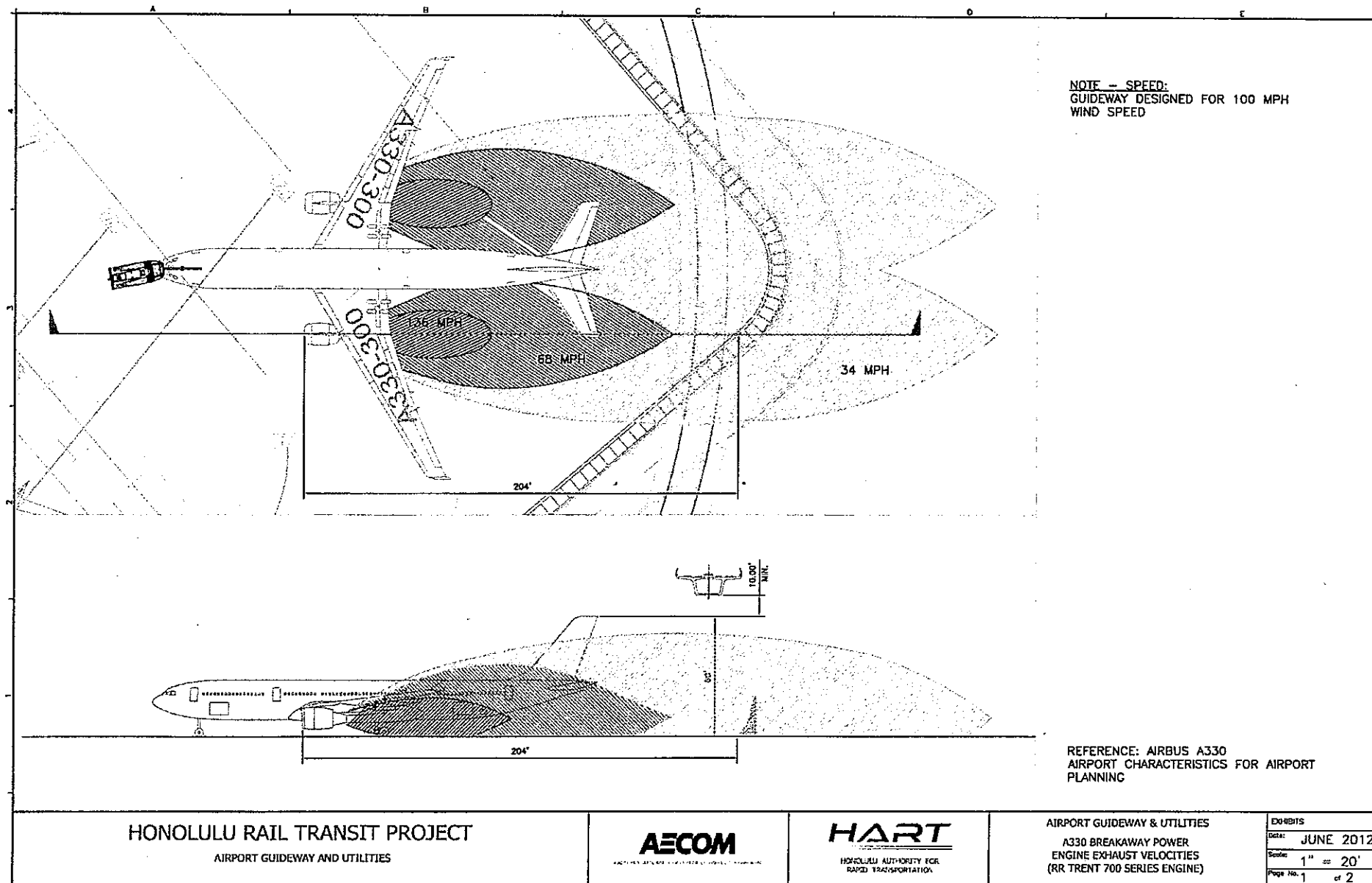






DIMENSION SPECIFIC
TO A330-200

A/C DIMENSIONS



NOTES — TEMPERATURE:
GUIDEWAY TEMPERATURE RANGE =
40°F TO 100°F

REFERENCE: AIRBUS A330
AIRPORT CHARACTERISTICS FOR AIRPORT
PLANNING

HONOLULU RAIL TRANSIT PROJECT
AIRPORT GUIDEWAY AND UTILITIES

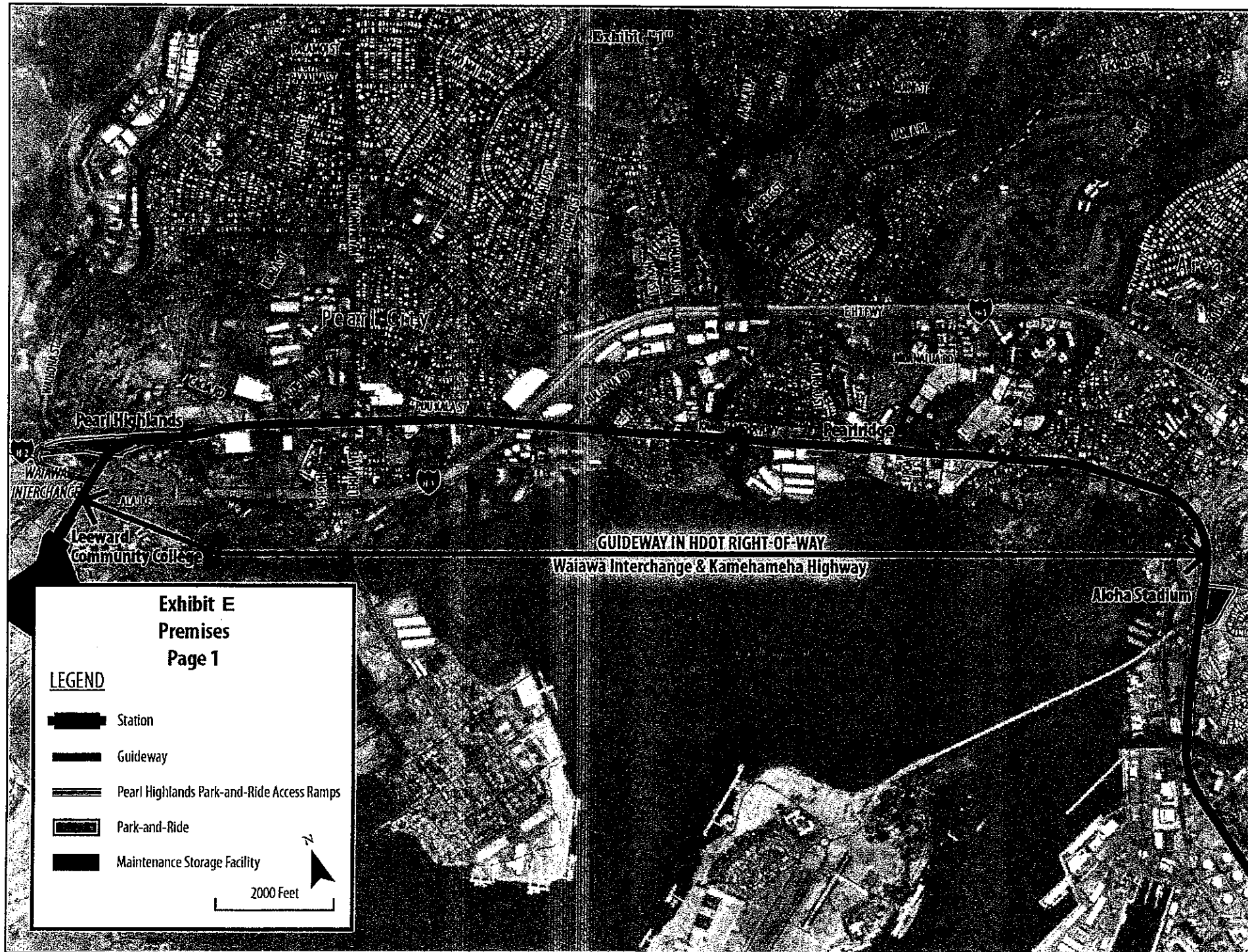
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HONOLULU AUTHORITY FOR
RAPID TRANSPORTATION

AIRPORT GUIDEWAY & UTILITIES
A330 BREAKAWAY POWER
ENGINE EXHAUST TEMPERATURES
(RR TRENT 700 SERIES ENGINE)

EXHIBITS
Date: JUNE 2012
Scale: 1" = 20'
Page No. 2 of 2

ATTACHMENT E2



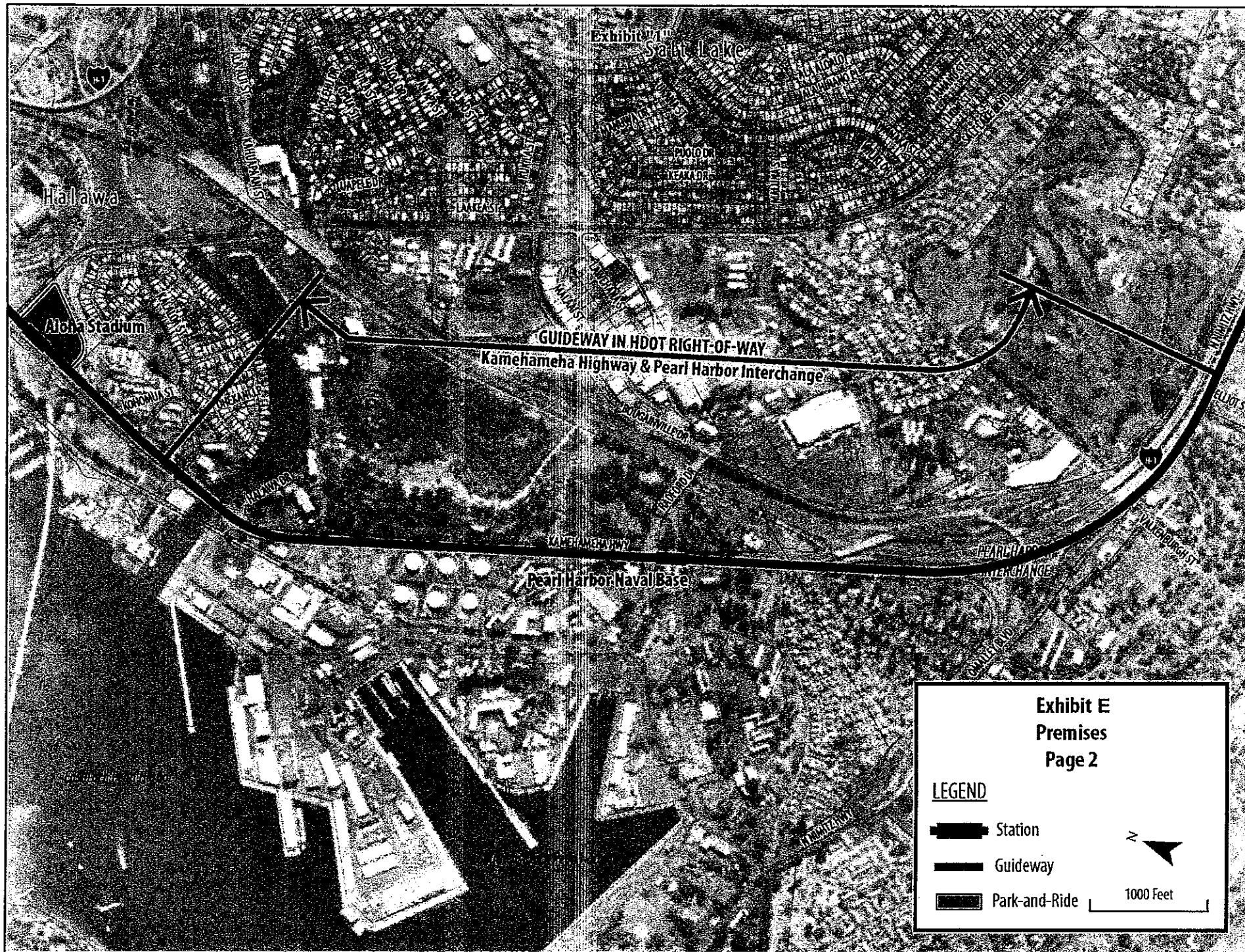


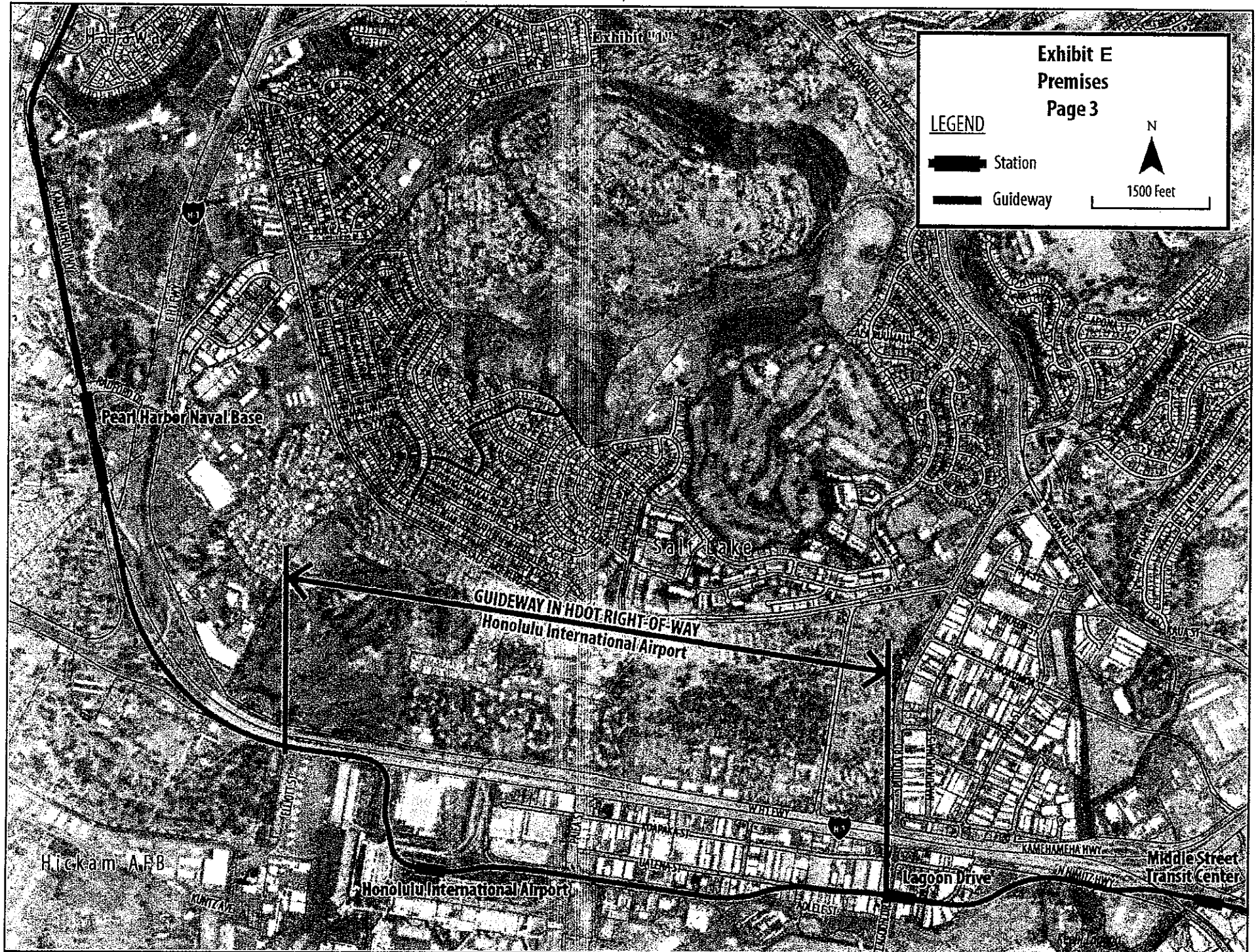
Exhibit E
Premises
Page 3

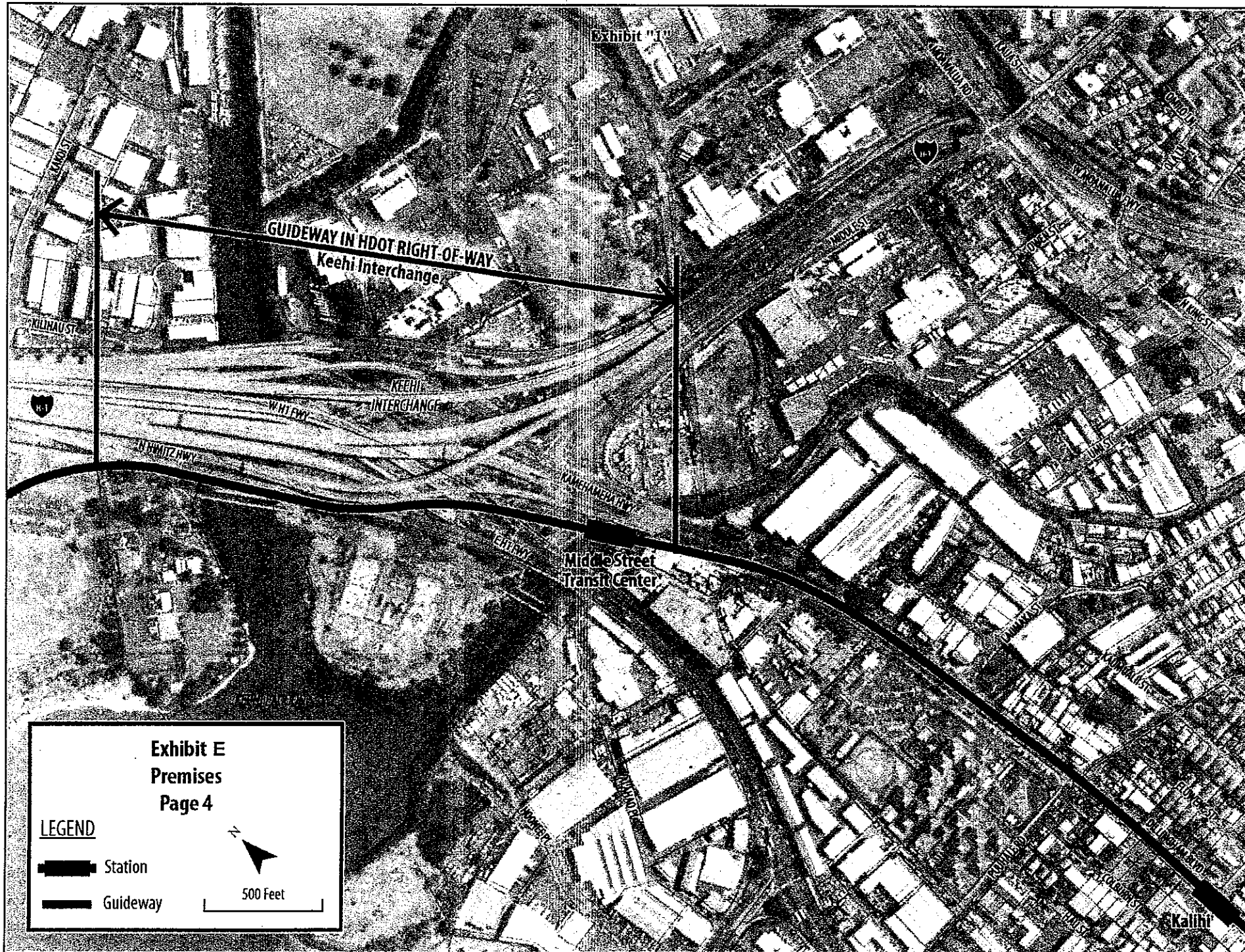
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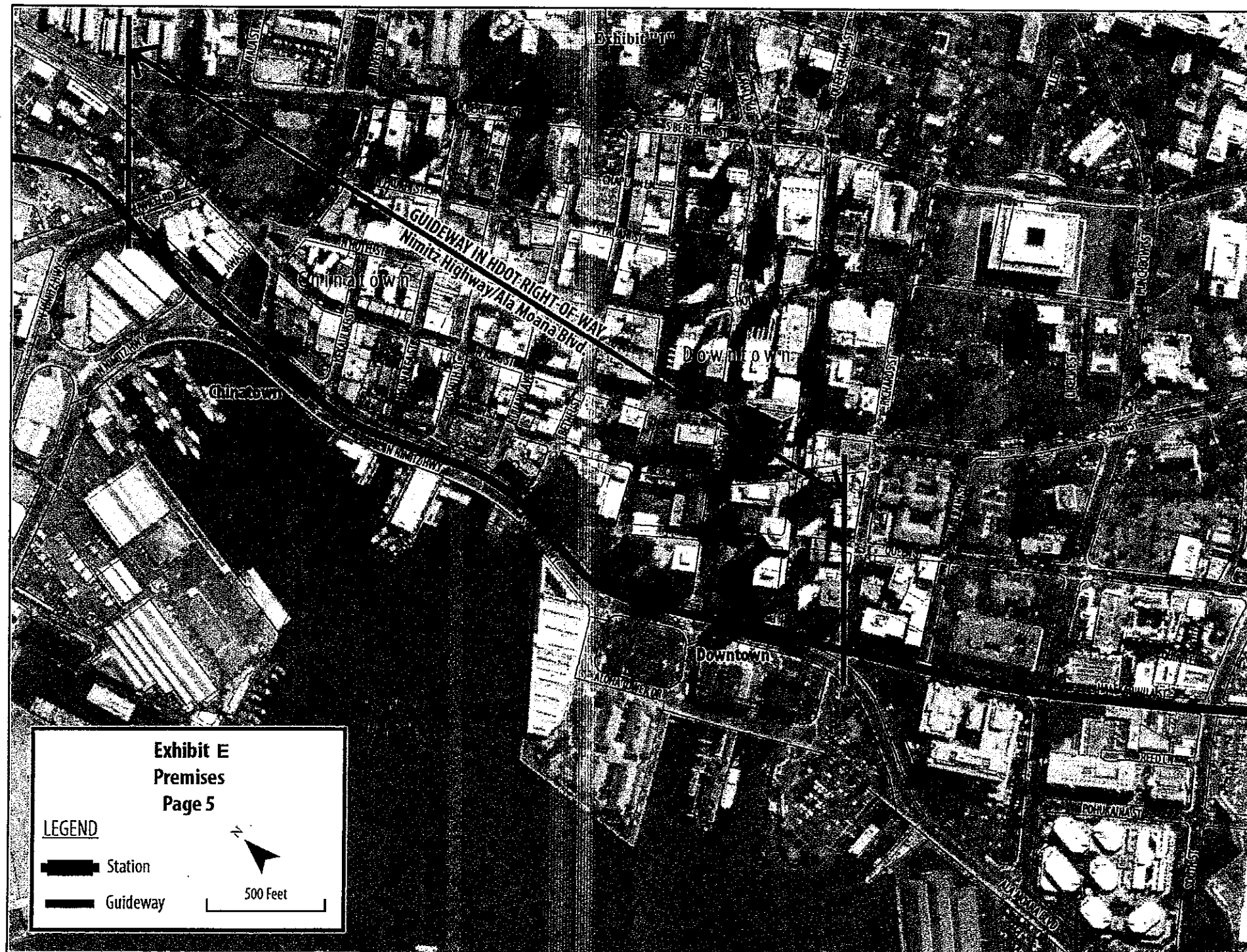
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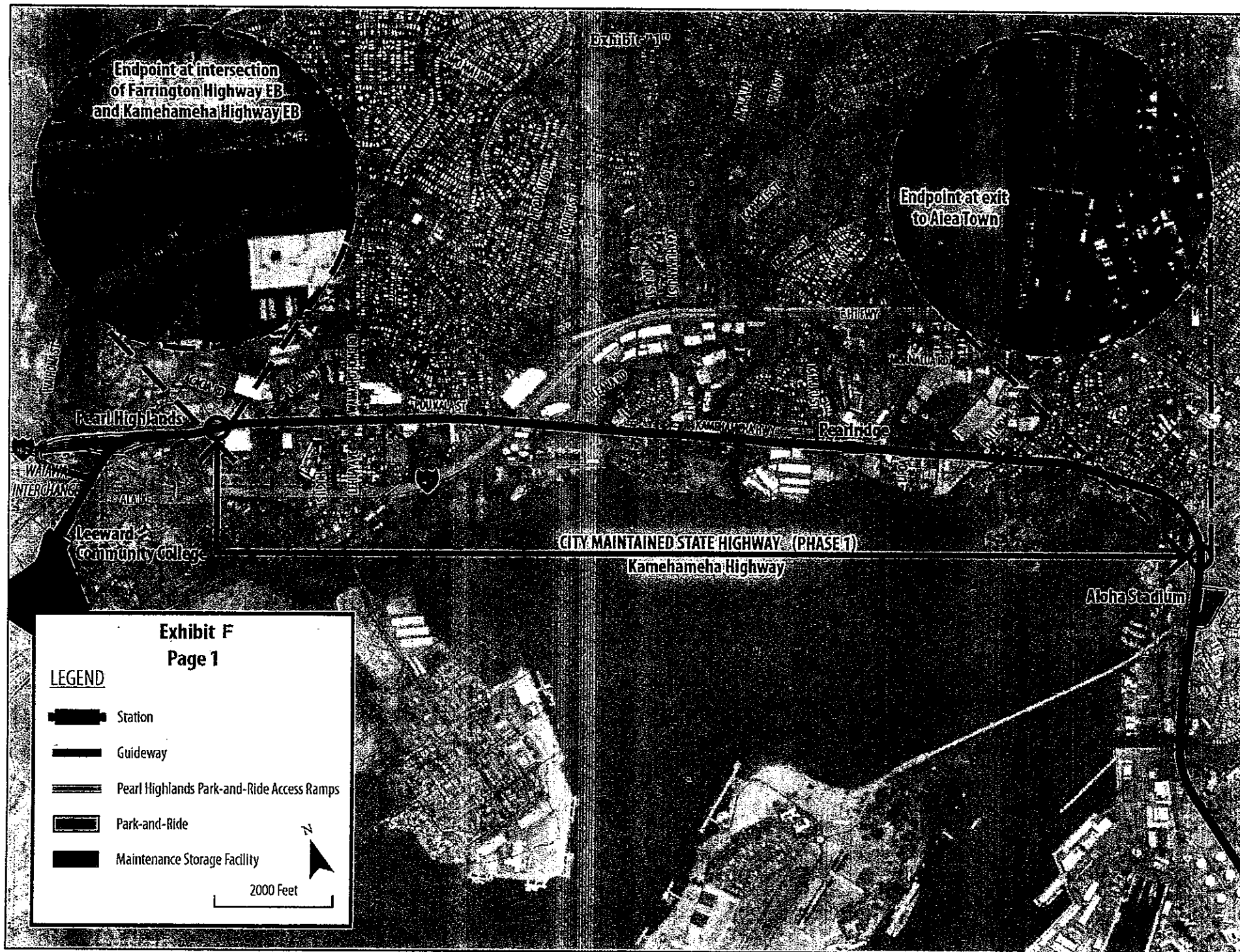


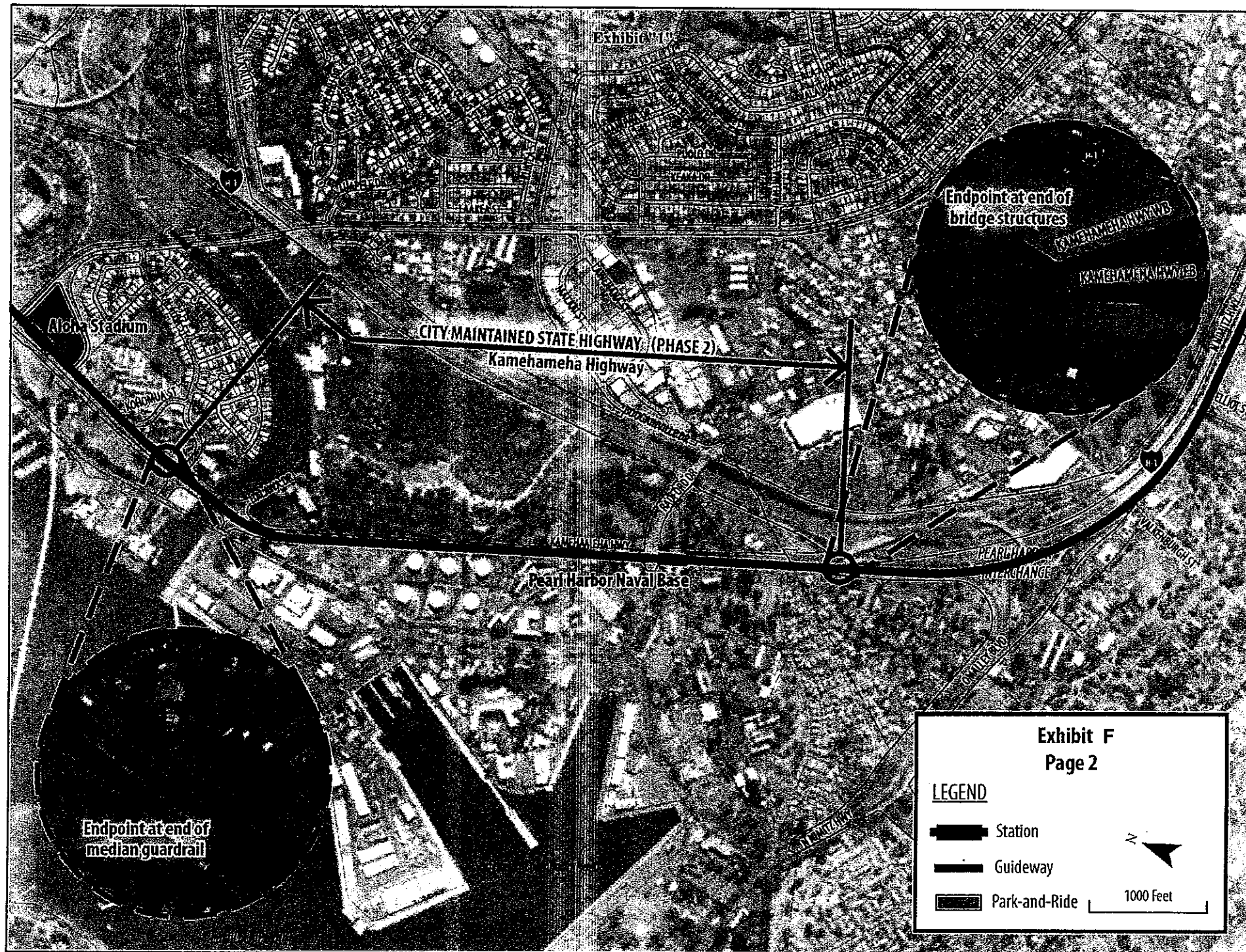
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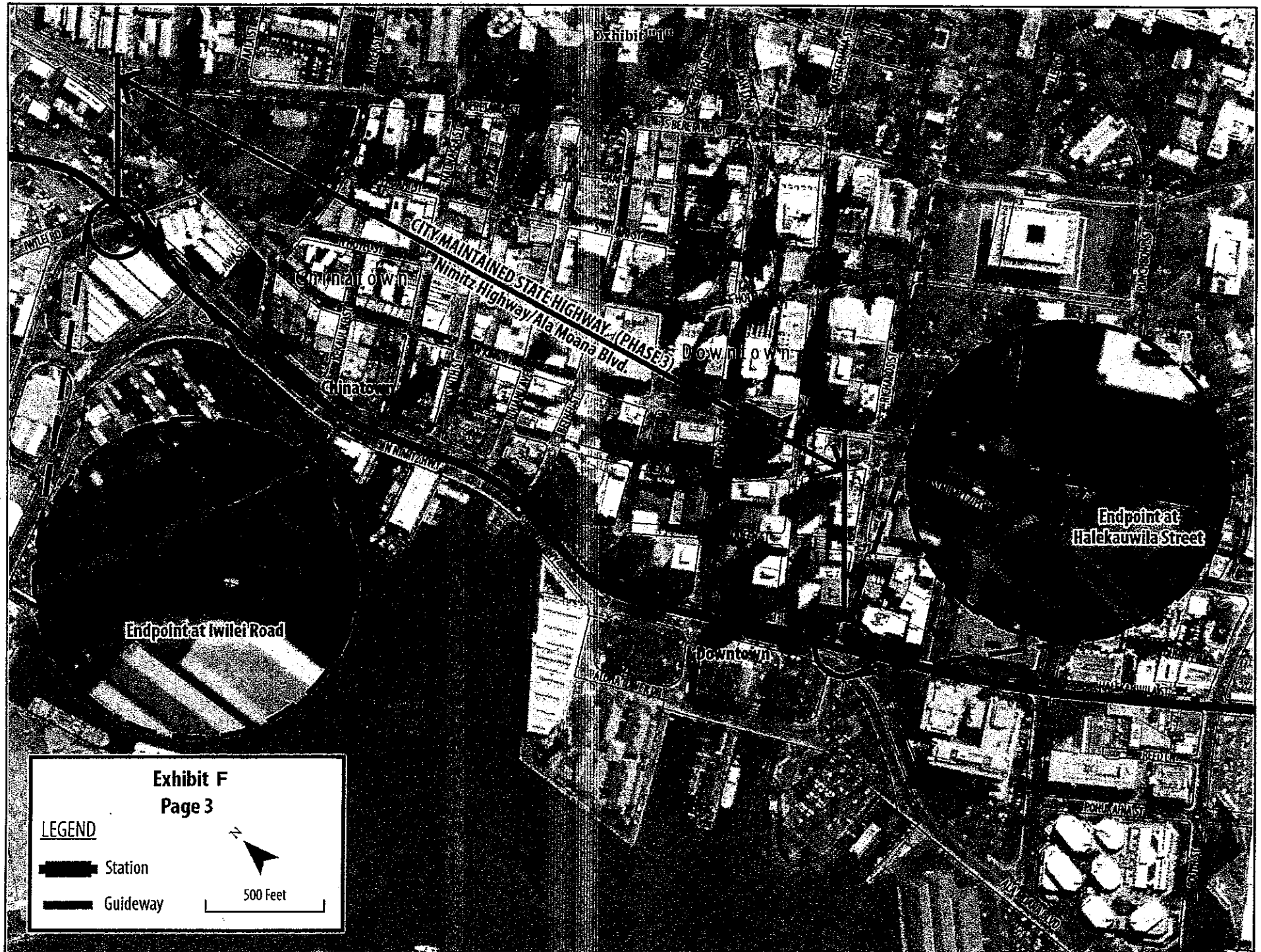


EXHIBIT "G"

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment & Natural Resources Division
ANGELA O'CONNELL
Environmental Enforcement Section
U.S. Department of Justice
301 Howard St., Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6485
Facsimile: (415) 744-6476
E-mail: angela.o'connell@usdoj.gov

EDWARD H. KUBO, JR.
United States Attorney
PJKK Federal Building
300 Ala Moana Boulevard, Room 6-100
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,
DEPARTMENT OF HEALTH, STATE
OF HAWAII,

Plaintiffs,

v.

DEPARTMENT OF TRANSPORTATION,
STATE OF HAWAII

Defendant.

CIVIL ACTION NO.

CONSENT DECREE
WITH APPENDICES A - G

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1 The United States of America, on behalf of the United States Environmental Protection
2 Agency ("EPA"), has filed a Complaint in this matter alleging that the Hawai'i Department of
3 Transportation ("HDOT") has violated provisions of the Clean Water Act ("Act"), 33 U.S.C.
4 §§1251- 1387, and the regulations promulgated pursuant to the Act, including the conditions and
5 limitations of the Hawai'i General Construction Activities Storm Water Permit, HAR 11-55
6 Appendix C; the Hawai'i General Industrial Activities Storm Water Permit, HAR 11-55
7 Appendix B; HDOT's Honolulu International Airport NPDES permit, Permit No. HI0021440;
8 and HDOT's Municipal Separate Storm Sewer System NPDES permit ("MS4") for Oahu, Permit
9 No. HI0021245 (to be reissued as No. HIS000001). The State of Hawai'i, on behalf of the
10 Hawai'i Department of Health ("DOH"), joined in the Complaint to bring claims against
11 Defendants for violations of State law.

12 The Parties recognize, and the Court by entering this Consent Decree finds, that this
13 Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between
14 the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

15 NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without
16 adjudication or admission of any issue of fact or law, and upon consent and agreement of the
17 Parties, it is hereby ADJUDGED, ORDERED, AND DECREED as follows:

18 **I. GENERAL PROVISIONS**

19 1. Jurisdiction and Venue. This Court has jurisdiction over the subject matter of this
20 action and over the parties pursuant to 33 U.S.C. §§1319 & 1365 and pursuant to 28 U.S.C.
21 §§ 1331, 1345, 1355 & 1367. The Complaint states claims upon which relief may be granted
22 under 33 U.S.C. §1319 and under applicable provisions of State law. Venue is proper in this
23 District under 33 U.S.C. § 1319(b) and under 28 U.S.C. §§ 1391(b) and (c) & 1395(a), because
24 the defendant may be found here and because the transactions and occurrences giving rise to the
25 Complaint occurred here. For purposes of the Decree, HDOT consents to and will not contest
26 the Court's exercise of personal jurisdiction over HDOT or venue in this District.

2. Parties Bound. The obligations of this Consent Decree apply to and are binding upon the United States and DOH and upon HDOT and any successors agencies or other entities or persons otherwise bound by law. Within 10 business days of entry of this Decree, HDOT shall provide a copy of this Decree to each Manager, each Project Superintendent, and each firm retained by HDOT to implement this Decree. If, more than 10 business days after entry of this Decree, a Manager, Project Superintendent, or other person or firm becomes an employee of HDOT or is retained by HDOT to implement provisions of this Decree, HDOT shall provide such person or firm a copy of the Decree within 10 business days of such employment or retention.

3. Definitions. Except as specifically provided in this Decree, definitions for the terms used in this Decree shall be incorporated from the Clean Water Act and the regulations promulgated pursuant to the Act. Whenever terms listed below are used in this Decree, the following definitions apply:

a. "Acceptable evidence", for the purposes of Paragraphs 21.c and 24.b, below includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods or services for which payment is made. Canceled drafts do not constitute acceptable evidence unless such drafts specifically identify and itemize the individual costs of the goods or services for which payment is made.

b. Best Management Practices (“BMPs”) shall have the meaning set forth in 40 C.F.R. § 122.2 which states that BMPs “mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘waters of the United States’.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.”

1 c. BMP Program Plan ("BMPPP") shall mean a programmatic chapter under
2 the Storm Water Management Program Plan ("SWMPP") that meets the terms and
3 conditions of the MS4 permit and the requirements of Section V of this Consent Decree
4 (Injunctive Relief).

5 d. "Clean Water Act" or "Act" shall mean the Federal Water Pollution
6 Control Act, as amended, 33 U.S.C. §§ 1251-1387.

7 e. "Connection Permit" shall mean a permit issued by HDOT for physical
8 connections into its Oahu MS4.

9 f. "Critical deficiencies" for purposes of Paragraph 10.g.(2) shall mean those
10 deficiencies that pose an immediate threat for the discharge of pollutants to the storm
11 drain system, surface waters, or State waters. Critical deficiencies include, but are not
12 limited to, the following examples:

13 (1) Any observed discharge, or evidence of discharge, of untreated
14 storm water or non-storm water to the storm drain system, surface waters, or State
15 waters generated by the construction activity.

16 (2) Absence of linear barriers and/or perimeter controls required by the
17 BMP Plan.

18 (3) There are identified storm drain inlets, surface waters, or State
19 waters within or adjacent to the project site in close proximity to disturbed soil
20 areas without control measures in place that pose an immediate threat of untreated
21 storm water discharges.

22 (4) Work in an active stream channel or other surface water body
23 without proper implementation of required BMPs.

24 (5) Presence of any spilled oil or hazardous materials near to
25 unprotected storm drain inlet, surface waters, or State waters.

1 g. "Day" shall mean a calendar day unless otherwise specified to be a
2 working day. "Business Day" shall mean a day other than a Saturday, Sunday, State or
3 Federal legal holiday. In computing a prescribed period of time, the day of the event shall
4 not be included. If a stated time period expires on a Saturday, Sunday, State or Federal
5 legal holiday, it shall be extended to include the next working day.

6 h. "Discharge Permit" shall mean a permit issued by HDOT for discharges
7 into its Oahu MS4.

8 i. "DOH" shall mean the Hawai'i Department of Health and any of its
9 successor departments, agencies, or instrumentalities.

10 j. "Encroachment permit project" shall mean a construction project
11 undertaken by a third party within one of HDOT's rights-of-way and that requires the
12 issuance by HDOT of a "Permit to Perform Work Upon State Highways".

13 k. "EPA" shall mean the United States Environmental Protection Agency and
14 any of its successor departments, agencies, or instrumentalities.

15 l. "General Construction Activities Storm Water Permit" refers to the permit
16 issued by DOH for Construction Activities, HAR 11-55 Appendix C.

17 m. "General Industrial Activities Storm Water Permit" refers to the permit
18 issued by DOH for Industrial Activities, HAR 11-55 Appendix B.

19 n. "High Priority Watersheds" shall mean those depicted at Appendix A
20 which is incorporated herein by reference.

21 o. "Industrial Activity" shall have the meaning set forth in 40 C.F.R. §
22 122.26(b)(14)(i)-(xi), excluding 40 C.F.R. § 122.26(b)(14)(x).

23 p. "Inspection" for purposes of Paragraph 10.k.(2) shall mean, at a minimum,
24 (1) Visual inspection of the inlet(s) and/or point of connection to the
25 MS4 for evidence of the presence of pollutants or other illegal discharges;

(2) Visual inspection of the tributary area for potential sources of pollutants exposed to stormwater and the presence of BMPs, if any, employed to prevent the discharge of those pollutants to the MS4; and

(3) Discussion with a facility representative to ensure that they know the difference between allowable discharges to the MS4 and pollutant discharges which are not allowed to be discharged to the MS4.

q. "Major deficiencies" for purposes of Paragraph 10.g.(2) shall mean those deficiencies that are significant problems which could result in the discharge of pollutants to the storm drain system, surface waters, or State waters. Major deficiencies include, but are not limited to, the following examples:

(1) No Best Management Practices (BMP) Plan or NPDES permit (if required).

(2) Linear barriers and/or perimeter controls in areas tributary to a water body or drain inlet are installed as required by the BMP Plan, but are not functional. This includes silt fences that are not anchored properly, have collapsed, been driven over or overwhelmed by accumulated sediment.

(3) Hazardous materials or waste is stored within the project without containment or implementation of BMPs.

(4) Oil, fuel, or brake or transmission fluid spills covering more than one square yard and/or adjacent to protected storm drain inlets, surface waters, or State waters.

(5) Any discharge of sediment or other deleterious material resulting from dewatering operations conducted without implementation of required BMPs for dewatering.

(6) Sediment tracking more than 50 feet from project ingress/egress location(s).

1 (7) Expansion of the active disturbed soil area limit without written
2 approval.

3 (8) Soil stabilization and sediment controls are not installed in
4 accordance with applicable construction site BMP Plan.

5 (9) Sediment controls are installed in accordance with the BMP Plan,
6 but there is a large unstabilized disturbed soil area with insufficient controls
7 downgradient to prevent the discharge of untreated storm water to the storm drain
8 system, surface waters, or State waters if a rain event generates runoff.

9 (10) Dust from project site visibly blowing off the site and into storm
10 drain conveyances or adjacent surface water bodies.

11 r. "Master Consultant" shall mean the consultant or consultants procured by
12 HDOT in order to provide various functions in support of the requirements of this
13 Consent Decree.

14 s. "Minor deficiencies" for purposes of Paragraph 10.g.(2) shall mean those
15 deficiencies that do not pose a threat for discharge of untreated storm water or pollutants
16 to the storm drain system, surface waters, or State waters, but are not in strict
17 conformance with the SWPPP or BMP Plan. Minor deficiencies include, but are not
18 limited to, the following examples:

19 (1) BMP Plan does not reflect current operations and an amendment is
20 recommended.

21 (2) BMPs are not deficient, but are not consistent with the BMP Plan.

22 (3) Linear barriers and/or perimeter controls are installed as required
23 by the BMP Plan, but require minor maintenance. For example, a silt fence which
24 is not anchored properly throughout the entire length or an inlet protection device
25 with some accumulated silt.

1 (4) Soil stabilization or sediment controls are installed as required by
2 the BMP Plan, but not properly maintained.

3 (5) Site inspections by project staff are not being conducted at the
4 required frequencies.

5 (6) Non-storm water or waste management BMPs improperly
6 maintained.

7 (7) Oil, fuel, or brake or transmission fluid spills covering less than
8 one square yard and not adjacent to storm drain inlets, surface waters, or State
9 waters.

10 (8) Evidence of active wind erosion on unstabilized slopes/stock piles.

11 (9) Minor tracking less than 50 feet from project ingress/egress
12 locations.

13 (10) Major deficiencies which are corrected prior to the inspector
14 leaving the site.

15 t. "MS4 Permit" refers to the NPDES permit issued by DOH to HDOT
16 Highways Division for discharges from HDOT's municipal separate storm sewer system
17 on the Island of Oahu and designated as Permit No. HI0021245 and to be reissued as No.
18 HIS000001.

19 u. "Notice of Intent" shall mean a request for coverage under a General
20 Permit.

21 v. "Parties" means the United States, on behalf of EPA; the State, on behalf
22 of DOH; and HDOT.

23 w. "Responsible Officer" shall mean an official of HDOT in charge of storm
24 water program functions for either the Highways Division or the Airports Division, or any
25 other person who performs similar policy or decision making functions for HDOT and is
26 authorized as set forth at 40 C.F.R. § 122.22.

x. "SEPs" shall mean the Supplemental Environmental Projects to be performed under this Decree and more fully described in Section VII, below.

y. "Service Contractor" shall mean the contractor or contractors procured by HDOT in order to provide various services in support of the requirements of this Consent Decree.

z. "Site" shall mean any location in the State of Hawai'i that HDOT owns, leases, or operates, and at which there is or will be construction resulting in ground-disturbing activities greater than or equal to one acre or that is otherwise subject to the NPDES storm water construction regulations set forth at 40 C.F.R. § 122.26(b)(14)(x) or 40 C.F.R. § 122.26(b)(15).

aa. **Site-Specific BMP Plan** shall mean a plan for controlling pollutants in storm water discharges from Sites that meets the requirements of the General Construction Activities Storm Water Permit and Section V of this Consent Decree.

bb. "State" shall refer to the State of Hawai'i.

cc. "SWPCP" shall mean a Storm Water Pollution Control Plan, a plan for controlling pollutants in storm water discharges from locations that meets the requirements of the General Industrial Activities Storm Water Permit and Section V of this Consent Decree.

dd. "SWMPP" shall mean a Storm Water Management Program Plan developed and implemented as required by HDOT's MS4 permit and modified as required by this Consent Decree.

II. COMPLIANCE WITH THE CLEAN WATER ACT

4. HDOT shall fully comply with all requirements of the Clean Water Act, as well as with the terms and conditions of all applicable NPDES Permits, including the Highways Division Oahu District Municipal Separate Storm Sewer System ("MS4") permit; the Honolulu International Airport NPDES permit, Permit No. HI0021440; the Hawai'i General Industrial

1 Activities Storm Water permit, HAR 11-55 Appendix B; and the Hawai'i General Construction
2 Activities Storm Water permit, HAR 11-55 Appendix C.

3 **III. APPROVAL PROCESS**

4 5. Approval of Deliverables. After review of any plan, report, or other item that is
5 required to be submitted pursuant to this Consent Decree, EPA and DOH shall in writing: (a)
6 approve the submission; (b) approve the submission upon specified conditions; (c) approve part
7 of the submission and disapprove the remainder; or (d) disapprove the submission.

8 a. If the submission is approved pursuant to Paragraph 5.(a), HDOT shall
9 take all actions required by the plan, report, or other document, in accordance with the
10 schedules and requirements of the plan, report, or other document, as approved. If the
11 submission is conditionally approved or approved only in part, pursuant to Paragraph
12 5.(b) or (c), HDOT shall, upon written direction of EPA and DOH, take all actions
13 required by the approved plan, report, or other item that EPA and DOH determine are
14 technically severable from any disapproved portions, subject to HDOT's right to dispute
15 only the specified conditions or the disapproved portions, under Section X of this Decree
16 (Dispute Resolution).

17 b. If the submission is disapproved in whole or in part pursuant to Paragraph
18 5.(c) or (d), HDOT shall, within 30 business days or such other time as agreed to in
19 writing, correct all deficiencies and resubmit the plan, report, or other item, or
20 disapproved portion thereof, for approval, in accordance with the preceding Paragraphs.
21 If the resubmission is approved in whole or in part, HDOT shall proceed in accordance
22 with the preceding Subparagraph.

23 6. Any Stipulated Penalties applicable to the original submission, as provided in
24 Section VIII of this Decree, shall accrue during the 30-day period or other period specified for
25 resubmission, but shall not be payable unless the resubmission is untimely or is disapproved in
26 whole; provided that, if the original submission was so deficient as to constitute a material breach
27

1 of HDOT's obligations under this Decree, the Stipulated Penalties applicable to the original
2 submission shall be due and payable notwithstanding any subsequent resubmission.

3 7. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in
4 whole or in part, EPA and DOH may again require HDOT to correct any deficiencies, in
5 accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to
6 HDOT's right to invoke Dispute Resolution and to the right of EPA and DOH to seek Stipulated
7 Penalties as provided in the preceding Paragraphs.

8 **IV. CERTIFICATION OF REPORTS AND SUBMISSIONS**

9 8. Except as otherwise expressly provided in this Consent Decree, any report or
10 other document submitted by HDOT pursuant to this Decree that makes any representation
11 concerning compliance or noncompliance with any requirement of this Decree, the Act or its
12 implementing regulations, or any applicable permit, shall be certified by a Responsible Officer of
13 HDOT. The certification shall be in the following form:

14 I certify under penalty of law that I have examined and am familiar with the
15 information submitted in this document and all attachments and that this
16 document and its attachments were prepared either by me personally or under my
17 direction or supervision in a manner designed to ensure that qualified and
18 knowledgeable personnel properly gather and present the information contained
19 therein. I further certify, based on my personal knowledge or on my inquiry of
20 those individuals immediately responsible for obtaining the information, that the
21 information is true, accurate and complete. I am aware that there are significant
22 penalties for submitting false information, including the possibility of fines and
23 imprisonment for knowingly and willfully submitting a materially false statement.

24 **V. INJUNCTIVE RELIEF**

25 Highways Division Oahu District MS4

26 Compliance with December 2003 SWMPP and Additional Requirements

27 9. Upon entry of this Consent Decree, HDOT shall fully and completely implement
28 its December 2003 Storm Water Management Program Plan ("SWMPP"). In addition, HDOT
shall also comply with the additional requirements set out below at Paragraphs 9.a - 9.g. For
each of these additional requirements, HDOT shall make and submit the necessary modifications

1 to its SWMPP and implement those modifications upon submittal. HDOT shall make additional
2 modifications as requested by EPA and DOH, in accordance with Section III (Approval Process).

3 a. Debris Removal Best Management Program

4 (1) Within 60 days of entry of this Consent Decree HDOT shall
5 modify, and implement accordingly, the Street Sweeping Schedule as set out as
6 Table II-1 of the December 2003 SWMPP so as to provide for the sweeping of all
7 state highway segments on Oahu (shoulders and medians) at least as frequently as
8 set forth in this Paragraph. A list of roadway segments and their respective
9 minimum sweeping frequencies is set out at Appendix B and incorporated herein
10 by reference. HDOT may propose revisions to this modified Street Sweeping
11 schedule when it submits the revised SWMPP in accordance with Paragraph 10.f
12 below.

13 (2) Within 60 days of entry of this Consent Decree, HDOT shall
14 modify, and implement accordingly, the Storm Drainage Structure Inspection
15 Schedule as set out as Table II-2 of the December 2003 SWMPP so as to provide
16 for the inspection and necessary cleaning, as provided for at Pages DR3-1 and
17 DR3-2, of all state highway storm drainage system, gutters, swales, open channels/
18 ditches, culverts, drain inlets, catch basins, manholes, outfalls, and other
19 accessible discharge points that are appurtenant to all state highway segments on
20 Oahu according to the requirements of this Paragraph. The minimum inspection
21 and cleaning frequencies required by this Subparagraph are set out at Appendix C
22 and incorporated herein by reference. HDOT may propose revisions to this
23 modified Storm Drainage Structure Inspection Schedule when it submits the
24 revised SWMPP per Paragraph 10.f, below.

25 (3) Within two years of entry of this Consent Decree, HDOT shall
26 develop and implement a comprehensive asset management system for the Oahu
27
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1 District's storm drain system and related appurtenances, including maintenance
2 equipment, to ensure appropriate debris removal and system maintenance. The
3 asset management system shall include justification of its priorities on the basis of
4 potential impacts to water quality and shall, at a minimum, include identification
5 of the number and location of all drain inlets and outfalls. HDOT shall use this
6 asset management system to establish priorities and to schedule and track
7 appropriate system maintenance and debris removal program activities, such as
8 street sweeping, catch basin cleaning, and green waste and accumulated soil
9 removal. The asset management system shall be included in the modified
10 SWMPP upon its completion.

11 b. Construction Activities BMP Program

12 (1) Within 90 days after entry of this Decree, HDOT shall provide a
13 copy of the current edition of the City and County of Honolulu's "Best
14 Management Practices Manual for Construction Sites in Honolulu" ("CCH
15 Manual"), to all appropriate staff involved in construction, including contractors
16 and in-house employees (including employees of the Maintenance Section who
17 are either directly or indirectly involved in the implementation of activities under
18 either the SWMPP and/or this Consent Decree), those involved in work done
19 pursuant to encroachment permits, and those involved in erosion control projects.
20 For the purposes of this Subparagraph, it shall be sufficient for HDOT to provide
21 to the offices listed in Appendix G, at a minimum, the number of CCH Manuals
22 specified in Appendix G. Within 90 days after entry of the Consent Decree, any
23 Contractor (either professional consultant or construction contractor) involved
24 with construction at HDOT facilities or within State Highways rights-of-way shall
25 be required to obtain the CCH Manual.

1 (2) HDOT shall provide annual training on the Construction BMP
2 Program Plan to all staff with construction storm water responsibilities, including
3 construction engineers, maintenance staff, and plan reviewers. This training shall
4 be specific to HDOT activities (including the proper installation and maintenance
5 of approved BMPs), policies, and procedures. The first annual training shall be
6 conducted by no later than September 15, 2005 or within 30 days after entry of
7 this Decree, whichever is later.

8 (3) Beginning 30 days after entry of this Decree, HDOT shall not
9 allow construction to commence on any contract, in-house, or encroachment
10 permit project unless and until it (a) has verified that the project has received from
11 DOH a Notice of General Permit Coverage under the Hawai'i General
12 Construction Activities Storm Water permit (unless the project will disturb less
13 than one acre of land) and has satisfied any other applicable requirements of the
14 Hawai'i NPDES permit program, and (b) has reviewed the applicable Site-
15 Specific BMP Plan to verify that it fully meets all requirements of the following,
16 to the extent that they are applicable: (i) HDOT's Standard Provisions (Sections
17 107.17 and 209); (ii) Water Pollution and Erosion Control Notes; (iii) NPDES
18 Requirements for Permit Projects Within State Highway Right-of-Way Notes; (iv)
19 the General Construction Activities Storm Water NPDES permit; and (v) any
20 other applicable requirements of the Hawai'i NPDES permit program. For
21 encroachment permit projects, HDOT shall only be responsible for the activities
22 described in Subparagraphs 9.b.(1) and 9.b.(3) above, for work that occurs within
23 HDOT rights-of-way.

24 (4) Within 10 business days after entry of this Decree, HDOT shall
25 submit for approval a checklist that its reviewers shall use in evaluating the BMP
26 plans pursuant to this Paragraph. Upon approval, HDOT shall provide copies of
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1 this checklist to applicants for encroachment permits and to contractors for their
2 use in developing construction Site-Specific BMP Plans for HDOT-contracted
3 construction projects.

4 (5) Upon entry of this Decree, prior to the initiation of ground-
5 disturbing activities at any Site, except for activities associated with the
6 installation of BMPs at a Site, no other construction activities may commence
7 until an HDOT engineer (or an engineer retained by HDOT) or qualified inspector
8 reviews and becomes familiar with the projects' site-specific BMP plan and
9 inspects the Site to determine whether the BMPs required by the BMP plan have
10 been installed correctly and in the correct locations. The engineer or qualified
11 inspector who conducts this inspection shall document that the BMPs required by
12 the BMP plan have been installed correctly and in the correct locations prior to the
13 commencement of any other ground-disturbing activity.

14 c. Chemical Applications BMP Program. Within 60 days after entry of this
15 Decree, HDOT shall develop and implement a specific training program, for all potential
16 applicers (bulk and hand-held) of fertilizers, pesticides, and herbicides, in the proper
17 application of those substances. HDOT shall not permit the application of fertilizers,
18 pesticides, or herbicides unless the applicer has first received this training.

19 d. Erosion Control BMP Program. Within 180 days after entry of this
20 Decree, HDOT shall submit for approval a plan for the completion of high priority
21 erosion control projects on all of the sites listed in Appendix D which is incorporated
22 herein by reference. This plan shall include for each site, at a minimum: the proposed
23 erosion control methodology to be utilized; construction schedule; cost estimate;
24 completion criteria; and a schedule for post-completion inspection and maintenance. All
25 erosion control projects to be done under this Subparagraph shall be completed by no
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1 later than two years after entry of this Decree. HDOT shall continue to perform
2 maintenance activities on completed projects as necessary.

3 e. Maintenance Facilities BMP Program

4 (1) Within 90 days after entry of this Decree, HDOT shall develop and
5 implement, for each maintenance baseyard located on Oahu, a site-specific
6 SWPCP that includes, among other things, a detailed site plan, site description,
7 and facility layout, description of potential pollutant sources, site-specific BMPs,
8 inspection procedures, and spill cleanup procedures. An individual at each facility
9 (e.g., yard foreman) shall be charged with ensuring implementation of the
10 SWPCP. This individual shall be trained to conduct inspections and identify areas
11 for BMP improvement. To ensure consistency and provide assistance and
12 oversight, HDOT shall identify an individual, also trained to conduct inspections
13 and identify areas for BMP improvement and independent of any specific
14 baseyard, who shall conduct inspections of all six baseyards at least quarterly.

15 (2) HDOT shall develop and implement a formal storm water
16 awareness training program for Oahu District Maintenance supervisors and staff
17 that identifies potential sources of pollution, general BMPs that can be used to
18 reduce or eliminate such sources, and specific BMPs for the District's facilities
19 and activities. The training shall incorporate elements of the public education
20 campaign being implemented by the City and County of Honolulu and shall
21 educate staff that they serve a role in protecting water quality. Maintenance
22 supervisors and staff shall be made aware of the NPDES permit, the overall
23 SWMPP, the SWPCP for their baseyard, and the applicable BMPPP(s). HDOT
24 shall conduct the first round of this training by no later than September 15, 2005
25 or within 30 days after entry of this Decree, whichever is later.

26 f. New Development and Significant Redevelopment BMP Program Plan

1 (1) Within 90 days of the commencement of services by the Master
2 Consultant, or within 180 days of entry of this Decree, whichever comes first,
3 HDOT shall develop and implement specific criteria establishing when permanent
4 post-construction BMPs must be included in project design to address storm water
5 impacts and pollutants of concern. These criteria shall take into consideration,
6 among other things, potential water quality impacts anticipated from the
7 permanent post-construction conditions. Permanent post-construction BMPs to be
8 considered shall include those designed to treat storm water runoff and other
9 structural type devices.

10 (2) Upon approval of the criteria established under Paragraph 9.f.(1),
11 above, HDOT shall not advertise any construction project or award any
12 construction contract unless and until the project design has been reviewed to
13 ensure that appropriate permanent post-construction BMPs have been included in
14 the project design and are included in the bid package. No project shall proceed
15 without the inclusion of appropriate permanent post-construction BMPs unless
16 there is specific documentation demonstrating that such post-construction BMPs
17 are not practicable. For the purposes of this Paragraph and for a period not to
18 exceed 60 days after approval of the criteria, matters concerning the timing or
19 scheduling of a project may be considered as a reason that post-construction
20 BMPs are not practical for inclusion in the project design. Project documents for
21 projects that will include installation of permanent post-construction BMPs shall
22 also include appropriate requirements for their future continued maintenance.

23 (3) Upon approval of the criteria established under Paragraph 9.f.(1),
24 HDOT shall not issue any encroachment, discharge, or connection permit for any
25 project that requires NPDES permit coverage under the General Construction
26 Activities Storm Water Permit unless and until the project design has been
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1 reviewed to ensure that appropriate permanent post-construction BMPs have been
2 included in the project design and are included in the permit application package.
3 No encroachment, discharge, or connection permit shall be issued without the
4 inclusion of appropriate permanent post-construction BMPs unless there is
5 specific documentation demonstrating that such post-construction BMPs are not
6 practicable. Permit documents for applications that will include installation of
7 permanent post-construction BMPs shall also include appropriate requirements for
8 their future continued maintenance.

9 g. Illicit Connection / Illegal Discharge Elimination Program

10 (1) HDOT shall complete follow-up investigations on all industrial,
11 commercial, and high-density residential parcels discharging to HDOT's MS4 that
12 are indicated in the December 2000 Storm Water Questionnaire Survey of Parcels
13 Adjacent to Highway Rights-of-Way ("Questionnaire Survey"). Follow-up
14 investigations shall be ranked as follows: parcels identified in the Questionnaire
15 Survey as priorities 1-4 shall be considered as Tier 1 parcels; parcels identified as
16 priorities 5-16 shall be considered as Tier 2 parcels; and parcels identified as
17 priorities 17-30 shall be considered as Tier 3 parcels. Each such investigation
18 shall be deemed completed upon either (a) the issuance of a discharge or
19 connection permit, or (b) sufficient documentation to support a conclusion that no
20 discharge or connection permit is necessary because (i) there is no physical
21 connection present, or (ii) the only potential discharges from non-industrial
22 activities are by overland sheet flow. Tier 1 investigations shall be completed
23 within 18 months after entry of this Decree. All Tier 2 and Tier 3 investigations
24 shall be completed within 3 years after entry of this Decree.

25 (2) Within 60 days after entry of this Decree, HDOT shall transmit to
26 DOH full electronic and paper copies of its survey parcel database, sorted by SIC
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code. HDOT shall provide electronic and paper updates to this list, reflecting outcomes of the investigations discussed above, on an annual basis in its Annual Report.

SWMPP Revisions

10. HDOT shall revise and submit for approval its Oahu District Storm Water Management Program Plan ("SWMPP") to incorporate the requirements set out at Paragraphs 9.a - 9.g, above, and at Paragraphs 10.a - 10.k, below. Unless specified otherwise, HDOT shall submit the revised SWMPP within 240 days of the commencement of services by the Master Consultant, or within one year of entry of this Decree, whichever comes first. Upon its submittal, HDOT shall fully and completely implement all parts of the revised SWMPP, which shall supersede the December 2003 SWMPP. HDOT shall make additional modifications as requested by EPA and DOH, in accordance with Section III (Approval Process).

a. Storm Water Management Program Structure. HDOT shall revise its SWMPP to include a formal storm water management program structure for the Oahu District MS4 program that includes, at a minimum, designated storm water contacts for each Highways Division branch, program, and field office, as appropriate. An organization chart to reflect this structure shall also be developed and submitted. For each designated contact, HDOT shall include a description of the position's roles and responsibilities for the storm water program. HDOT shall hold monthly meetings with these contacts to discuss implementation and evaluation of the storm water program. HDOT shall maintain copies of the sign-in sheets for these meetings in accordance with Paragraph 52, below, and these shall be made available to EPA and DOH upon request.

b. Measurable Goals. HDOT shall revise its SWMPP to include a combination of both direct and indirect objective, quantitative standards ("measurable goals") that can be used to measure progress under each specific program element in its SWMPP. In its SWMPP, HDOT shall incorporate the specific measurable goals

1 identified in other parts of this Consent Decree in addition to developing other
2 appropriate measurable goals.

3 c. Training and Education

4 (1) HDOT shall revise its SWMPP to establish a training program
5 such that all HDOT staff and management involved in storm water management
6 activities shall receive at least annual storm water training in the requirements of
7 each program element for which they have responsibility. This training program
8 shall include, at a minimum, for each program element: (a) identification and
9 qualifications of the trainers; (b) training in, at a minimum for each program
10 element, the following topic areas: review of applicable measurable goals; the
11 selection and implementation of appropriate BMPs; and review of storm water
12 regulations, permits, and the terms of this Consent Decree; and (c) appropriate
13 documentation of training activities.

14 (2) To the extent that HDOT utilizes contractors, with the exception of
15 general contractors used to construct contract construction projects, to implement
16 any SWMPP activities, HDOT shall require that such contractors receive training
17 equivalent to that included in HDOT's training program in all applicable areas.

18 (3) No less than annually, HDOT shall offer appropriate storm water
19 runoff management training to general contractors and subcontractors used to
20 construct HDOT's contract construction projects. Such training shall emphasize
21 sediment and erosion control requirements and BMPs (Chapter 2 in the CCH
22 manual), but shall additionally cover, in appropriate detail, requirements and
23 BMPs for all of the other Contractor Activities covered in Chapter 1 of the CCH
24 Manual.

25 (4) Prior to the issuance of any Notice to Proceed, or the equivalent, to
26 any contractor on any contract construction project, HDOT shall hold a
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1 preconstruction meeting with the project's prime contractor during which the
2 requirements of the General Construction Activities Storm Water Permit shall be
3 discussed, as well as (a) Standard Provisions (Sections 107.17 and 209); (b)
4 "Water Pollution and Erosion Control Notes"; and (c) the applicable requirements
5 of this Consent Decree.

6 d. Monitoring of Program Effectiveness. HDOT shall revise its SWMPP to
7 include a discussion of specific activities to be undertaken in order to assess BMP
8 effectiveness, including an evaluation of success in achieving measurable goals and a
9 discussion of available and applicable water quality monitoring data. Assessments of
10 program effectiveness shall be conducted at least annually and be reported in HDOT's
11 End-of-Year Reports.

12 e. Reporting. HDOT shall revise its SWMPP to include a description of
13 reporting procedures and activities, including schedules and proposed content of semi-
14 annual and annual reports such that, at a minimum, the following is reported for each
15 storm water program element (BMP Program) in each Mid-Year and End-of-Year Report:

16 (1) Requirements: description of what HDOT was required to do
17 (permit requirements, EPA or DOH orders for compliance, or other commitments
18 set forth in the SWMPP and this Consent Decree);

19 (2) Past Year Activities: description of activities over the reporting
20 period including, where applicable, progress accomplished toward meeting
21 specific measurable goals or other specific performance requirements and
22 including, when requirements were not fully met, a detailed explanation as to why
23 HDOT did not meet its commitments for the reporting period;

24 (3) Future Activities: description of planned activities including,
25 where applicable, specific activities to be undertaken during the next reporting
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1 period toward accomplishing specific measurable goals or other specific
2 performance requirements;

3 (4) Resources: report on the status of HDOT's resource base for
4 implementing both this Consent Decree and HDOT's NPDES permit during the
5 applicable reporting period, together with an estimate of the resources over and
6 above those required in the current reporting period that will be required in the
7 next reporting period.

8 f. Debris Removal Best Management Practices Program. HDOT shall revise
9 its SWMPP to develop procedures and a schedule for inspections of:

10 (1) all state highways on Oahu for the purpose of identifying whether
11 sweeping or brooming of roadways, shoulders, or medians is needed, and

12 (2) all state highway storm drainage system catch basins, gutters and
13 open ditches, trenches, and storm drains on Oahu for the purpose of identifying
14 whether cleaning of such structures is needed.

15 In both cases identified in the preceding Subparagraphs, the need for sweeping, brooming, or
16 structure cleaning shall, in addition to other criteria, be determined based upon material
17 accumulation rates and potential threat of discharges to waters of the United States that may have
18 an effect on water quality. The schedule shall provide that each highway mile and storm
19 drainage feature is inspected at least once annually, but that highway segment drainages and their
20 associated storm features that are located in High Priority Watersheds shall be inspected at least
21 semiannually. The adopted procedures shall also provide for the identification of other highway
22 segments (in addition to those located in High Priority Watersheds) and their associated storm
23 drainage features that may require more frequent sweeping, brooming, or structure cleaning
24 based upon material accumulation rates and potential threat of discharges to waters of the United
25 States that may have an effect on water quality. The procedures shall establish debris
26 accumulation thresholds above which sweeping, brooming, or structure cleaning must occur.

1 g. Construction Activities BMP Program.

2 (1) HDOT shall revise the following documents to require use of the
3 CCH Manual and the City and County of Honolulu's "Rules for Soil Erosion
4 Standards and Guidelines," April 1999: (a) Standard Provisions (Sections 107.17
5 and 209); (b) "Water Pollution and Erosion Control Notes"; and (c) "NPDES
6 Requirements for Permit Projects Within State Highway Right-of-Way Notes."
7 These revised documents shall be used, to the extent applicable, on all contract,
8 in-house, and encroachment permit construction projects on Oahu. HDOT shall
9 incorporate these revised documents, either explicitly or by reference, into its
10 revised SWMPP.

11 (2) HDOT shall revise its SWMPP to specify mandatory minimum
12 project inspection and enforcement requirements for use at all construction sites
13 as follows:

14 (a) In addition to inspections required by the Hawai'i General
15 Construction Activities Storm Water permit, and as otherwise required
16 under the Hawai'i NPDES permit program, all in-house and contract
17 construction projects shall be inspected at least monthly by a qualified
18 construction inspector who is independent (i.e., not involved in the
19 projects' day-to-day planning, design, or implementation) of the
20 construction projects to be inspected. HDOT may use more than one
21 qualified construction inspector for these inspections. HDOT, in
22 consultation with DOH, shall develop and implement a standard
23 inspection form, and reporting procedures for use in these inspections.
24 The inspection form shall include, at a minimum, a checklist for the proper
25 installation of BMPs specified in the BMP plan, and the reporting
26 procedures shall include, at a minimum, notification of critical deficiencies

1 to the Director of HDOT and DOH. Upon three successive monthly
2 inspections that indicate, in total, no critical or major deficiencies or less
3 than six minor deficiencies with no more than three minor deficiencies in
4 one month in a project's BMPs or other storm water management
5 activities, HDOT may decrease the inspection frequency for such project
6 to quarterly. However, if while under a quarterly inspection frequency, an
7 inspection of a project conducted pursuant to this Paragraph indicates at
8 least one critical or major deficiency or a total of three or more minor
9 deficiencies in the project's BMPs or other storm water management
10 activities, the inspection frequency shall immediately return to no less than
11 monthly. HDOT shall further develop and implement written procedures
12 for appropriate corrective actions and follow-up inspections when an
13 inspected project is not in full compliance with this Consent Decree, the
14 HDOT MS4 permit, the Hawai'i General Construction Activities Storm
15 Water permit, or any other applicable requirements under the Hawai'i
16 NPDES permit program. The corrective action procedures shall at a
17 minimum require that (i) any critical deficiencies shall be corrected or
18 addressed before the close of business on the day of the inspection at
19 which the deficiency is identified, and (ii) any major deficiencies shall be
20 corrected or addressed as soon as possible, but in no event later than five
21 business days after the inspection at which the deficiency is identified or
22 before the next forecasted precipitation, whichever is sooner.

23 (b) All encroachment permit construction projects shall be
24 inspected at least once during the life of the project, and any project of the
25 types listed immediately below shall be inspected at least annually if it
26 continues longer than one year's duration:
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- 1) Housing/commercial development improvements which include large roadway and utility improvements or any grading within HDOT's rights-of-way;
- 2) Utility main installation (waterlines, sewerlines, underground electrical lines, etc.);
- 3) Landscape/irrigation installation (e.g. median beautification projects); and
- 4) Drainline connections.

All inspections shall be conducted by a qualified construction inspector. HDOT may use more than one qualified construction inspector for these inspections. HDOT, in consultation with DOH, shall develop and implement a standard inspection form and reporting procedures for use in these inspections. The inspection form shall include, at a minimum, a checklist for the proper installation of BMPs specified in the BMP plan, and the reporting procedures shall include, at a minimum, notification of any critical deficiencies to the Director of HDOT and DOH. HDOT shall further develop and implement written procedures for appropriate corrective actions and follow-up inspections when an inspected project is not in full compliance with this Consent Decree, the HDOT MS4 permit, or the Hawai'i General Construction Activities Storm Water permit.

h. Erosion Control Best Management Practices Program. HDOT shall revise its SWMPP as follows:

- (1) HDOT shall include water quality impacts as a priority in selecting projects for erosion control improvements, ensuring that erosional areas with the potential for significant water quality impact, but with limited public safety concerns, are also considered a high priority for remediation. Erosional areas with the potential for significant water quality impact shall include areas where there is evidence of rilling or gullyng or other evidence of significant sediment transport.

1 and that are located within High Priority Watersheds. HDOT shall identify and
2 implement erosion control projects based on water quality concerns while
3 continuing to address high profile public safety projects.

4 (2) HDOT shall require the prompt implementation of temporary
5 erosion control measures (e.g., erosion control blankets or fabrics, gravel bags,
6 and silt fence/fiber rolls) on the erosional areas with the potential for significant
7 water quality impact identified in the preceding Subparagraph if a permanent
8 solution is not immediately possible.

9 (3) HDOT shall modify the list of approved erosion and sediment
10 control BMPs to include, at a minimum, at least all of those contained in the CCH
11 Manual. The revised SWMPP shall also provide for the implementation of
12 alternative erosion and sediment control BMPs where appropriate.

13 (4) HDOT shall undertake a program to evaluate the erosional
14 potential of storm drain system outlets that discharge downslope of the roadbed.
15 Where discharge points are observed to be creating erosional conditions, HDOT's
16 program shall require installation of velocity dissipaters or other BMPs to reduce
17 the risk of continued erosion at these locations.

18 i. Maintenance Facilities BMP Program. HDOT shall develop and
19 implement a written set of maintenance BMPs for routine and emergency in-house
20 activities. Activity-specific BMPs shall be organized as a manual and be created in a
21 format that facilitates its use by field staff. It shall be distributed to all field staff and
22 shall complement the overall goals of the BMPPP.

23 j. New Development and Significant Redevelopment BMP Program Plan.
24 HDOT shall revise its SWMPP to add the following additional permanent post-
25 construction BMPs to the current list in Section 3 of the New Development and
26 Significant Redevelopment BMP Program Plan (Section VIII M of the December 2003
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1 SWMPP): infiltration basins, infiltration trenches, media filters, Continuous Deflective
2 Separation (CDS) units, and similar technologies.

3 k. Illicit Connection / Illegal Discharge Elimination Program. HDOT shall
4 revise its SWMPP as follows:

5 (1) HDOT shall develop procedures for identifying and responding to
6 possibly illicit connections and illegal discharges. These procedures shall include,
7 but not be limited to, specific time deadlines for responding to identified
8 discharges. Such identification and response procedures shall be coordinated with
9 the inspection procedures required under the revised Debris Removal Best
10 Management Practices Program set forth in Paragraph 10.f, above.

11 (2) HDOT shall develop a program to conduct inspections of industrial
12 and commercial holders of connection and discharge permits to its MS4. This
13 industrial/commercial inspection program shall include scheduling inspections
14 such that each industrial facility is inspected at least once every five years. Any
15 industrial facility that does not have NPDES permit coverage under the Hawai'i
16 NPDES permit program shall be reported to DOH no later than 30 days after the
17 inspection date. Commercial dischargers are to be ranked according to relative
18 risk of discharge of contaminated runoff to HDOT's MS4. The highly ranked
19 commercial facilities shall be inspected at least once every 5 years. This
20 industrial/commercial inspection program shall be updated as appropriate to
21 reflect the outcomes of the investigations discussed in the preceding
22 Subparagraph.

23 11. Highways Division Construction Activities on Other Islands. On a statewide
24 basis HDOT shall implement all of the revised construction program activities requirements
25 pursuant to Paragraphs 9.b, 10.g.(1), and 10.g.(2)(a), above, and all of the revised New
26 Development and Significant Redevelopment project activities requirements pursuant to
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Paragraphs 9.f and 10.j, above, on all HDOT construction projects (including contract and in-house projects) that are subject to NPDES storm water permit requirements, except that references in Paragraph 10.g.(1) to the CCH "Rules for Soil Erosion Standards and Guidelines" (April 1999) shall be modified to require use and adoption of each county's comparable and applicable standards. The time deadlines contained in the referenced Paragraphs shall apply on the Other Islands under this Paragraph.

Airports Division

Airport Tenant Inspections and Enforcement

12. Within 90 days after entry of this Decree, HDOT shall submit to EPA and DOH a written program of procedures for airport tenant inspection and enforcement that shall be used at Honolulu International, Lihue, and Kahului airports, in accordance with the requirements of this Paragraph. HDOT shall implement the procedures upon their submission to and approval by EPA and DOH. HDOT shall make modifications as requested EPA and DOH, in accordance with the requirements of Section III (Approval Process). This tenant inspection and enforcement program shall provide, at a minimum, for the following:

a. HDOT shall develop procedures and schedules for inspections of all airport tenants, including all those located away from the airports proper (e.g., on Aolele and Ualena Streets in Honolulu). At each airport, HDOT shall rank each tenant for its relative potential either to contribute pollutants to storm water runoff or to have a non-storm water discharge either into the airport storm sewer system or otherwise into waters of the United States. Rankings shall be made on a low/medium/high threat basis. Tenants that have separate NPDES permit coverage shall always be ranked as high threat. At least once each calendar year, HDOT shall review its tenant lists and these rankings and update them as necessary. This updated list shall be submitted as part of HDOT's Annual Report.

b. HDOT shall inspect each tenant/facility in each ranking class as follows:

1 (1) High ranked tenants, other than those that have separate NPDES
2 permit coverage, shall be inspected at least quarterly.

3 (2) High ranked tenants that have separate NPDES permit coverage
4 shall be inspected at least annually. HDOT shall submit a copy of each report of
5 these inspections to DOH within 30 days of the date of the inspection.

6 (3) Medium ranked tenants shall be inspected at least annually.

7 (4) Low ranked tenants shall be inspected at least biennially.

8 (5) HDOT shall inspect each of its airport maintenance baseyards at
9 least quarterly. HDOT shall submit a copy of each report of these inspections to
10 DOH within 30 days of the date of the inspection.

11 c. Procedures for inspection of airport tenants and maintenance yards shall
12 require a written record of the inspection such as either a checklist or form. At a
13 minimum, such checklist or form shall for each inspection identify: facility name,
14 address, contact name, contact telephone number, and SIC code; inspection date;
15 inspector name; BMPs evaluated; inspection findings; and recommended follow-up
16 actions. Copies of all inspection reports shall be maintained for a minimum of 5 years
17 and shall be made available to EPA or DOH upon request.

18 d. Procedures for enforcement against tenants with inadequate BMPs or non-
19 storm water discharges shall include identification of a range of enforcement responses
20 available to HDOT, clear guidelines for selection of an enforcement response appropriate
21 to the tenant deficiency at issue, guidelines for escalating the initial enforcement response
22 for multiple or repeated violations, and follow-up inspections to ensure the problems have
23 been corrected.

24 e. HDOT shall develop procedures for training of HDOT and contract
25 management staff charged with implementing or overseeing airport tenant inspection and
26 enforcement activities.
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13. Resources. HDOT shall take all actions to ensure that it has adequate resources, including contracting resources, to comply with all requirements of both this Consent Decree and its NPDES permits. Such actions shall include, but not be limited to, accurately assessing resource needs, communicating these needs to the Director of HDOT, making timely budget requests of the legislature, and notifying the legislature of the terms and requirements of this Consent Decree and HDOT's NPDES permits. The human resources necessary to carry out the requirements of this Consent Decree and HDOT's NPDES permits may be comprised of either HDOT employees or contractors or both.

14. Reporting. For the first year after entry of this Consent Decree, HDOT shall submit quarterly reports to EPA and DOH that shall include the following information for the past quarter. The first quarterly report shall be due 60 days after the end of the first complete quarter following entry of this Consent Decree. All other reports shall be submitted no later than 45 days after the last day of each calendar quarter. After submittal of the fourth quarterly report referenced above HDOT shall, for the duration of this Decree, submit semiannual reports. Semiannual reports shall be due on August 31st and February 28th and shall cover the six month periods ending on June 30th and December 31st, respectively. HDOT may submit separate quarterly and semiannual reports for the Airports and Highways Divisions. All reports shall, at a minimum, include the following information:

a. Oahu District MS4 Activities

(1) Storm Water Contact Coordination Meetings

The number, dates, and names of attendees of each monthly Storm Water Contact Coordination meetings;

(2) Debris Removal Program Activities

(a) Specific highway segments (with dates) inspected for sweeping needs;

(b) Specific highway segments swept, frequency of sweeping, and the total amount of debris removed;

(c) Specific (by Milepost or other identifier) storm drainage system catch basins, gutters and open ditches, trenches, and sewers inspected, by specific highway segment and date;

(d) Specific (by Milepost or other identifier) storm drainage system catch basins, gutters and open ditches, trenches, and sewers cleaned, the date(s) of cleaning, and the nature and total amount of debris removed;

- (e) Number and dates of debris removal program trainings, types of trainings, and attendees participating in each; and
- (f) Activities undertaken toward development and utilization of the asset management system;
- (3) Construction Program Activities
- (a) Total number of contract projects in the planning or design stages and total number of projects for which permanent post-construction BMP review was completed;
- (b) Total number of contract project contracts put out to bid, total number awarded, total number of contract project NPDES permit verifications and BMP plans reviewed, and total number of pre-construction BMP verification inspections;
- (c) Total number of in-house project NPDES permit verifications and BMP plans reviewed and total number of pre-construction BMP verification inspections;
- (d) Total number of active construction projects and the total number of storm water inspections, specifying project type (contract, in-house, permit); and
- (e) Number and dates of construction program trainings, types of trainings, and attendees participating in each;
- (4) Chemical Applications Program Activities
- Number and dates of chemical applications program trainings, types of trainings, and attendees participating in each;
- (5) Erosion Control Program Activities
- (a) Number of erosional problem areas with a potential for significant water quality impact identified, the number stabilized (permanently or temporarily) or otherwise remediated, and a revised schedule for stabilizing or otherwise remediating the remaining areas; and
- (b) Number and dates of erosion control program trainings, types of trainings, and attendees participating in each;
- (6) Maintenance Facility Program Activities
- (a) Dates and locations and a summary of findings of maintenance facility oversight inspections; and
- (b) Number and dates of maintenance facility trainings, types of trainings, and attendees participating in each;
- (7) New Development and Significant Redevelopment Program Activities
- (a) Number of project designs reviewed for appropriate inclusion of permanent post-construction BMPs; and
- (b) Number and dates of New Development and Significant Redevelopment Program Activities trainings, types of trainings, and attendees participating in each;
- (8) Illicit Connection / Illegal Discharge Elimination Program Activities
- (a) Total number of completed follow-up investigations of discharging industrial, commercial, and high-density residential parcels;
- (b) Total number of inspections of industrial and commercial dischargers to HDOT's right-of-way; and
- (c) Number and dates of IC/ID Program Activities trainings, types of trainings, and attendees participating in each;
- b. Statewide Highway Construction Activities

1 (1) Total number of contract projects in the planning or design stages
2 and total number of projects for which permanent post-construction BMP review
3 was completed;

4 (2) Total number of contract project contracts put out to bid, total
5 number awarded, total number of contract project NPDES permit verifications
6 and BMP plans reviewed, and total number of pre-construction BMP verification
7 inspections;

8 (3) Total number of in-house project NPDES permit verifications and
9 BMP plans reviewed and total number of pre-construction BMP verification
10 inspections;

11 (4) Total number of active construction projects and the total number
12 of storm water inspections, specifying project type (contract and in-house); and

13 (5) Number and dates of construction program trainings, types of
14 trainings, and attendees participating in each;

15 c. Airports Division

16 (1) A listing of each tenant, its relative pollutant risk ranking, date(s)
17 on which it was inspected by HDOT, and types of enforcement response actions
18 taken against any tenant, including dates and any required follow-up activities;
19 and

20 (2) Number and dates of tenant inspection and enforcement program
21 trainings, types of trainings, and attendees participating in each.

22 15. Responsibility for Acts of Contractors or Agents. HDOT shall be responsible for
23 ensuring that work is performed in accordance with the requirements of this Decree, even if that
24 work is performed by contractors, subcontractors, or agents. HDOT shall provide a copy of this
25 Decree to all Managers, employees, contractors, subcontractors, and agents whose duties might
26 reasonably include compliance with any provision of this Decree, as well as to any contractor
27 specifically retained to perform work required under this Decree. Defendant shall condition any
28 such contract upon performance of the work in conformity with the terms of this the Decree. In
any action to enforce this Consent Decree, HDOT shall not raise as a defense the failure by any
of its Managers, employees, agents, contractors, or subcontractors to take any actions necessary
to comply with the provisions of this Decree.

VI. **CIVIL PENALTY**

16. Civil Penalty. Within 30 days after entry of this Consent Decree, HDOT shall pay
a civil penalty of \$1,000,000.00, plus interest from the date the penalty is due. Interest shall be
calculated in accordance with 28 U.S.C. § 1961. Interest shall continue to accrue until payment
is made. The Civil Penalty payment shall be allocated with \$600,000, plus accrued interest, if

1 any, being paid to the United States and \$400,000, plus accrued interest, if any, being paid to
2 DOH.

3 17. Method of Payment.

4 a. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to
5 the U.S. Department of Justice in accordance with instructions to be provided to HDOT,
6 following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S.
7 Attorney's Office for the District of Hawai'i. At the time of payment, HDOT shall
8 simultaneously send written notice of payment and a copy of any transmittal
9 documentation (which should reference DOJ case number 90-5-1-1-07488 and the civil
10 action number of this case) to the United States in accordance with Section XIV
11 (Notification).

12 b. Payment shall be made by cashier's or certified check made payable to the
13 State of Hawai'i. At the time of payment, Defendant shall simultaneously send written
14 notice of payment and a copy of any transmittal documentation (which should reference
15 the civil action number of this case) to the Parties in accordance with Section XIV
16 (Notification).

17 **VII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

18 18. HDOT shall implement a Supplemental Environmental Project ("SEP"),
19 consisting of an Audit and Environmental Management System ("EMS")("the EMS SEP"), to be
20 performed in accordance with the provisions of Appendix E to this Consent Decree, which is
21 attached hereto and incorporated into this Decree by reference. In implementing the SEP, HDOT
22 shall spend not less than \$1,062,500 in Eligible SEP costs. Eligible SEP costs include the costs
23 of planning and implementing the SEP, but do not include any costs associated with corrective
24 actions needed for compliance actions identified under the EMS.

25 19. HDOT shall implement a SEP consisting of "Erosion and Sediment Control for
26 Highways" Compliance Assistance Workshops for contractors of professional services and for
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1 contractors of construction services on the islands of Hawai'i (in Hilo and Kona), Kauai, Maui,
2 and Oahu (in Honolulu and Kapolei)("the Compliance Assistance Workshops SEP"). These
3 Compliance Assistance Workshops shall be developed and implemented in accordance with the
4 provisions of Appendix F to the Consent Decree which is attached hereto and incorporated into
5 this Decree by reference. In implementing the SEP, HDOT shall spend not less than \$60,000 in
6 Eligible SEP costs. Eligible SEP costs are limited to the costs to perform the tasks described in
7 Appendix F, and do not include any costs associated with developing the workshop curriculum.

8 20. With regard to each SEP, HDOT certifies the truth and accuracy of each of the
9 following:

10 a. that, as of the date of executing this Decree, HDOT is not required to
11 perform or develop the SEP by any federal, state, or local law or regulation and is not
12 required to perform or develop the SEP by agreement, grant, or as injunctive relief
13 awarded in any other action in any forum;

14 b. that the SEP is not a project that HDOT was planning or intending to
15 construct, perform, or implement other than in settlement of the claims resolved in this
16 Decree;

17 c. that HDOT has not received, and is not negotiating to receive, credit for
18 the SEP in any other enforcement action; and

19 d. that HDOT will not receive any reimbursement for any portion of the SEP
20 from any other person.

21 21. EMS SEP Completion Report. Within 30 days after HDOT concludes that the
22 EMS SEP has been fully implemented in accordance with the requirements of this Decree,
23 HDOT shall submit to the Parties in accordance with Section XIV of this Consent Decree
24 (Notification) a SEP Completion Report. The SEP Completion Report shall contain the
25 following information:

26 a. A detailed description of the SEP as implemented;

b. A description of any problems encountered in completing the SEP and the solutions thereto;

c. An itemized list of all Eligible SEP costs and acceptable evidence of such costs; and

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree and Appendix E.

22. EPA may, in its sole discretion, require information in addition to that contained in Defendants' initial SEP Completion Report, in order to determine the adequacy of SEP completion or eligibility of SEP costs, and Defendants shall provide such information.

23. After receiving the SEP Completion Report, the United States (after consultation with DOH) shall notify HDOT whether or not it has satisfactorily completed the EMS SEP. If the SEP has not been satisfactorily completed in accordance with this Decree and Appendix E, or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 18, above, Stipulated Penalties may be assessed under Section VIII of this Consent Decree.

24. Compliance Assistance Workshops SEP Completion Report. Within 30 days after HDOT concludes the final Compliance Assistance Workshop, HDOT shall submit to the Parties in accordance with Section XIV of this Consent Decree (Notification) a SEP Completion Report. The SEP Completion Report shall contain the following information:

a. A detailed description of the SEP as implemented;

b. An itemized list of all Eligible SEP costs and acceptable evidence of such costs; and

c. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree and Appendix F.

25. DOH may, in its sole discretion, require information in addition to that contained in Defendants' initial SEP Completion Report, in order to determine the adequacy of SEP completion or eligibility of SEP costs, and Defendants shall provide such information.

26. After receiving the SEP Completion Report, the DOH (after consultation with United States) shall notify HDOT whether or not it has satisfactorily completed the Compliance Assistance Workshops SEP. If the SEP has not been satisfactorily completed in accordance with this Decree and Appendix F, or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 19, above, Stipulated Penalties may be assessed under Section VIII of this Consent Decree.

27. Disputes concerning the satisfactory performance of each SEP may be resolved under Section X of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

28. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 8, above.

29. Any public statement, oral or written, in print, film, or other media, made by HDOT making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States and State of Hawai'i v. Hawai'i Department of Transportation, taken on behalf of the U.S. Environmental Protection Agency and the Hawai'i Department of Health under the Clean Water Act."

VIII. STIPULATED PENALTIES

30. Stipulated Penalty Amounts. If HDOT fails to comply fully and timely with the requirements of this Decree, including the compliance dates for each and every measure set forth in Section V (Injunctive Relief) and Section VII (Supplemental Environmental Projects), and with all requirements set forth in any applicable permits, HDOT shall pay Stipulated Penalties in the following amounts:

a. for each failure to submit a Notice of Intent or otherwise obtain a permit, failure to prepare a Site-Specific BMP Plan, or failure to have the Site-Specific BMP Plan available at a construction site: \$1,000 per day per violation;

- 1 b. for each failure in developing a SWPCP for any location in accordance
2 with applicable permits and guidance documents: \$800 per violation;
- 3 c. for failure to install a BMP specified by the Site-Specific BMP Plan or
4 permit: \$2,000 per day per violation;
- 5 d. for each failure to properly install or maintain appropriate BMPs in
6 accordance with applicable plans, permits, and guidance documents: \$1,500 per day per
7 violation;
- 8 e. for failure to conduct the inspections required by Paragraphs 9.a.(2),
9 9.b.(5), 9.e.(1), 10.f, 10.g.(2), 10.k.(2), 11, and 12 above: \$1,000 for each of the first ten
10 violations; \$2,500 for each of the next ten violations; and \$5,000 for each subsequent
11 violation;
- 12 f. for failure to provide reports required pursuant to Paragraphs 10.e and 14:
13 \$500 per day for the first ten days of each violation; \$1,000 per day for the next ten days
14 of each violation; and \$2,500 per day for each subsequent day of violation;
- 15 g. for each failure to timely submit or re-submit plans for approval in
16 accordance with Section III (Approval Process): \$500 for each day of violation;
- 17 h. for each failure to conduct or document the training required by
18 Paragraphs 9.b.(2), 9.c, 9.e, 10.c, 11, and 12.e above: \$1,000;
- 19 i. for failure to pay the civil penalty or accrued interest: \$1,000 for each day
20 that the payment is late;
- 21 j. for failure to timely submit the documents required by the SEP pursuant to
22 Section VII of this Decree and Appendix E: \$500 per day per violation;
- 23 k. for failure to timely submit a draft workshop outline as described in
24 Appendix F: \$500 per day;
- 25 l. for each failure to offer a workshop: \$5,000; and
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1 m. for each failure to timely submit the documents required by the SEP
2 pursuant to Section VII of this Decree and Appendix F: \$500 per day per violation.

3 31. EMS SEP Compliance: If HDOT's total Eligible SEP Costs are less than
4 \$1,062,500 in connection with the performance of the EMS SEP described in Appendix E to this
5 Consent Decree, or if the SEP has not been satisfactorily completed, HDOT shall be liable for
6 stipulated penalties as set forth below. If HDOT has halted or abandoned the completion of the
7 SEP, such penalties shall accrue from the date of abandonment or the date set for completion of
8 the SEP, whichever is earlier.

9 a. If the SEP has been satisfactorily completed but HDOT's total Eligible
10 SEP Costs are less than \$1,062,500, HDOT shall pay stipulated penalties at the rate of
11 100% for every one dollar that HDOT's total Eligible SEP Costs are less than
12 \$1,062,500.

13 b. If the SEP has not been satisfactorily completed, HDOT shall pay
14 stipulated penalties at the rate of 150% for every one dollar that HDOT's total Eligible
15 SEP Costs are less than \$1,062,500. If the SEP has not been satisfactorily completed but
16 HDOT's total Eligible SEP Costs for the SEP are equal to or exceed \$1,062,500, HDOT
17 shall not be liable for any stipulated penalties for the SEP if HDOT has made good faith
18 and timely efforts to complete the SEP and certifies with supporting documentation, no
19 later than the date that HDOT is required to submit a SEP Completion Report, that it has
20 spent at least \$1,062,500 in Eligible SEP Costs. If HDOT does not provide the
21 certification and the documentation required by this Subparagraph, or if the
22 documentation provided does not support HDOT's certification, HDOT shall be deemed
23 to be in violation of this Consent Decree and shall pay stipulated penalties of \$25,000.

24 32. Compliance Assistance Workshops SEP Compliance: If HDOT's total Eligible
25 SEP Costs are less than \$60,000 in connection with the performance of the Compliance
26 Assistance Workshops SEP described in Appendix F to this Consent Decree, or if the SEP has
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1 not been satisfactorily completed, HDOT shall be liable for stipulated penalties as set forth
2 below. If HDOT has halted or abandoned the completion of the SEP, such penalties shall accrue
3 from the date of abandonment or the date set for completion of the SEP, whichever is earlier.

4 a. If the SEP has been satisfactorily completed but HDOT's total Eligible
5 SEP Costs are less than \$60,000, HDOT shall pay stipulated penalties at the rate of 100%
6 for every one dollar that HDOT's total Eligible SEP Costs are less than \$60,000.

7 b. If the SEP has not been satisfactorily completed, HDOT shall pay
8 stipulated penalties at the rate of 150% for every one dollar that HDOT's total Eligible
9 SEP Costs are less than \$60,000. If the SEP has not been satisfactorily completed but
10 HDOT's total Eligible SEP Costs for the SEP are equal to or exceed \$60,000, HDOT
11 shall not be liable for any stipulated penalties for the SEP if HDOT has made good faith
12 and timely efforts to complete the SEP and certifies with supporting documentation, no
13 later than the date that HDOT is required to submit a SEP Completion Report, that it has
14 spent at least \$60,000 in Eligible SEP Costs. If HDOT does not provide the certification
15 and the documentation required by this Subparagraph, or if the documentation provided
16 does not support HDOT's certification, HDOT shall be deemed to be in violation of this
17 Consent Decree and shall pay stipulated penalties of \$25,000.

18 33. Accrual of Stipulated Penalties. Stipulated Penalties under this Section shall
19 begin to accrue on the day after performance is due or on the day a violation occurs, whichever is
20 applicable, and shall continue to accrue until performance is satisfactorily completed or until the
21 violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this
22 Consent Decree. Penalties shall accrue regardless of whether HDOT has been notified of a
23 violation but need not be paid until a demand is made. HDOT shall pay any Stipulated Penalty
24 within 30 days of receiving written demand therefor.

25 34. Demand. The United States or DOH, or both, may seek Stipulated Penalties
26 under this Section. Where both sovereigns seek Stipulated Penalties for the same violation of
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1 this Consent Decree, HDOT shall pay 60% of total Stipulated Penalties to the United States and
2 40% to DOH. Where only one sovereign demands Stipulated Penalties for a violation, it shall
3 make that demand on its own behalf, and HDOT shall pay the full amount of the Stipulated
4 Penalties due for the violation to that sovereign.

5 35. Waiver of Stipulated Penalties. The United States or DOH may, in the
6 unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due that
7 sovereign under this Consent Decree. The determination by one sovereign not to seek Stipulated
8 Penalties, or subsequently to waive or reduce the amount it seeks, shall not preclude the other
9 sovereign from seeking Stipulated Penalties.

10 36. Payment. HDOT shall, as directed by the United States in its demand, pay
11 Stipulated Penalties owing to the United States by EFT in accordance with Section VI (Civil
12 Penalty), Paragraph 17.a, above, or by certified or cashier's check in the amount due, payable to
13 the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-07488 and United States
14 Attorney's Office file number [REDACTED], and delivered to the office of the United States
15 Attorney, District of Hawai'i, Room 6-100, PJKK Federal Building, 300 Ala Moana Boulevard,
16 Honolulu, Hawai'i 96850. Any payment of Stipulated Penalties shall be accompanied by a
17 transmittal memorandum referencing DOJ No. 90-5-1-1-07488 and United States Attorney's
18 Office file number [REDACTED] and stating that payment of Stipulated Penalties is being
19 made. HDOT shall pay any Stipulated Penalties owing to DOH according to the provisions of
20 Section VI (Civil Penalty), Paragraph 17.b.

21 37. Interest. If HDOT fails to pay Stipulated Penalties according to the terms of this
22 Consent Decree, HDOT shall be liable for interest on such penalties, as provided for in 28 U.S.C.
23 § 1961, accruing as of the date payment became due.

24 38. No Effect on Obligation to Comply. The payment of Stipulated Penalties shall
25 not alter in any way HDOT's obligation to comply with the requirements of this Decree.
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1 41. Definition of Force Majeure. A "Force Majeure" event is any event beyond the
2 control of HDOT, its contractors, or any entity controlled by HDOT that delays the performance
3 of any obligation under this Consent Decree despite HDOT's best efforts to fulfill the obligation.
4 "Best efforts" includes anticipating any potential Force Majeure event and addressing the effects
5 of any such event (a) as it is occurring, and (b) after it has occurred, to prevent or minimize any
6 resulting delay to the greatest extent possible. In no case shall any of the following circum-
7 stances give rise to a claim of Force Majeure: unanticipated or increased costs or expenses
8 associated with implementation of this Decree or changed financial circumstances; failure to
9 apply for a required permit or approval, or to provide in a timely manner all information required
10 to obtain a permit or approval, that is necessary to meet the requirements of this Decree; failure
11 by HDOT to approve contracts; failure by HDOT to secure federal funding; or failure by HDOT
12 to fill all staffing positions.

13 42. Required Notification. HDOT shall notify EPA and DOH orally or by electronic
14 or facsimile transmission as soon as possible, but not later than 72 hours after the time HDOT
15 first knew of, or in the exercise of reasonable diligence under the circumstances should have
16 known of, any event that might delay completion of any requirement of this Decree, whether or
17 not the event is a Force Majeure event. HDOT shall make the oral notification to the United
18 States required by this Paragraph by calling Kathi Moore, the Chief of the Clean Water
19 Compliance Office; in the event that HDOT is unable to reach Kathi Moore, such notification
20 may be effective if HDOT leaves a detailed message explaining that notice is being provided
21 pursuant to this Paragraph. HDOT shall make oral notification to DOH by calling Denis Lau, the
22 Chief of the Clean Water Branch. The United States and DOH may designate alternative
23 representatives to receive oral notification at their discretion by sending HDOT a written
24 designation in accordance with Section XIV (Notification). Within 7 days of providing oral
25 notice, HDOT shall provide written notice by facsimile with hard copy to follow to EPA and
26 DOH. The written notice HDOT submits pursuant to this Paragraph shall indicate whether
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1 HDOT claims that the delay should be excused due to a Force Majeure event. The written notice
2 shall describe in detail the basis for HDOT's contention that it has experienced, or may
3 experience, a Force Majeure delay (if it intends to make such a claim); the anticipated length of
4 the delay; the precise cause or causes of the delay; and the measures taken or to be taken to
5 prevent or minimize the delay and the timetable by which those measures will be implemented.
6 Failure to comply with the procedures of this Paragraph shall preclude HDOT from asserting any
7 claim of Force Majeure.

8 43. Procedures for Extension. If the United States agrees that a Force Majeure event
9 has occurred or will occur, the United States may agree to extend the time for HDOT to perform
10 the affected requirements for the time necessary to complete those obligations. An extension of
11 time to perform the obligations affected by a Force Majeure event shall not, by itself, extend the
12 time to perform any other obligation. Where the United States agrees to an extension of time, the
13 appropriate modification shall be made pursuant to Section XV of this Consent Decree
14 (Modification).

15 44. Dispute Resolution. If the United States does not agree that a Force Majeure
16 event has occurred, or does not agree to the extension of time sought by HDOT, the United
17 States' position shall be binding, unless HDOT invokes Dispute Resolution under Section X of
18 this Consent Decree. In any such dispute, HDOT bears the burden of proving, by a prepon-
19 derance of the evidence, that each claimed Force Majeure event is a Force Majeure event; that
20 HDOT gave the notice required by Paragraph 42, above; that the Force Majeure event caused any
21 delay HDOT claims was attributable to that event; and that HDOT exercised best efforts to
22 prevent or minimize any delay caused by the event.

23 **X. DISPUTE RESOLUTION**

24 45. Exclusive Remedy. Unless otherwise expressly provided for in this Decree, the
25 dispute resolution procedures of this Section shall be the exclusive mechanism to resolve
26 disputes between HDOT and the United States and DOH arising under this Decree. However,
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1 the procedures set forth in this Section shall not apply to actions by the United States or DOH to
2 enforce obligations of HDOT that have not been disputed in accordance with this Section. The
3 procedures set forth in this Section shall not apply to disputes between DOH and the United
4 States.

5 46. Informal Dispute Resolution. Any dispute subject to dispute resolution under this
6 Consent Decree shall first be the subject of informal negotiations. The dispute shall be
7 considered to have arisen when HDOT sends the United States and DOH a written Notice of
8 Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal
9 negotiations shall not exceed 20 days from the date the dispute arises, unless that period is
10 modified by written agreement of the United States, DOH, and HDOT. If the Parties cannot
11 resolve a dispute by informal negotiations, then the position advanced by the United States (after
12 consultation with DOH) shall be considered binding unless, within 30 days after the conclusion
13 of the informal negotiation period, HDOT invokes formal dispute resolution procedures set forth
14 in Paragraph 47, below.

15 47. Formal Dispute Resolution.

16 a. Within 30 days after the conclusion of the informal negotiation period,
17 HDOT may invoke formal dispute resolution procedures by serving on the United States
18 and DOH a written Statement of Position regarding the matter in dispute. The Statement
19 of Position shall include, but may not be limited to, any factual data, analysis, or opinion
20 supporting HDOT's position and any supporting documentation relied upon by HDOT.

21 b. The United States and DOH shall serve their Joint Statement of Position
22 within 45 days of receipt of HDOT's Statement of Position. The Joint Statement of
23 Position shall include, but may not be limited to, any factual data, analysis, or opinion
24 supporting that position and any supporting documentation relied upon by the United
25 States. The Joint Statement of Position shall be binding on HDOT, unless HDOT files a
26 motion for judicial review of the dispute in accordance with Paragraph 48, below.
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1 48. Petitions to the Court. In the event that the Parties cannot resolve a dispute by
2 informal or formal negotiations as set forth above, the following procedures shall apply:

3 a. HDOT may seek judicial review of the dispute by filing with the Court and
4 serving on the United States and DOH a Motion requesting judicial resolution of the
5 dispute. The Motion shall be filed within 30 days of receipt of the Joint Statement of
6 Position set forth in Paragraph 47.b, above.

7 b. The Motion shall attach all Statements of Position and shall contain a
8 written statement of HDOT's position on the matter in dispute, including any supporting
9 factual data, analysis, opinion, and documentation, and shall set forth the relief requested
10 and any schedule within which the dispute must be resolved for orderly implementation
11 of the Consent Decree. HDOT shall serve such Motion on the United States and DOH
12 electronically and by overnight delivery.

13 c. The United States and DOH shall respond to HDOT's Motion within 30
14 days of the service of the Motion. The United States and DOH agree to serve their Joint
15 Response electronically and by overnight delivery.

16 d. HDOT may file a reply memorandum within 15 business days of service
17 of the Joint Response.

18 e. Standard and Scope of Review. In any dispute brought under this
19 Paragraph, HDOT shall bear the burden of demonstrating that its position clearly
20 complies with the Clean Water Act and the Act's implementing regulations and that
21 Defendant is entitled to relief under applicable law. The United States reserves the right
22 to argue that its position is reviewable only on the administrative record and must be
23 upheld unless arbitrary and capricious or otherwise not in accordance with law.

24 49. Effect on Other Obligations. The invocation of dispute resolution procedures
25 under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of
26 HDOT under this Consent Decree, unless and until final resolution of the dispute so provides.
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1 Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day
2 of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in
3 Paragraph 40, above. If HDOT does not prevail on the disputed issue, Stipulated Penalties shall
4 be assessed and paid as provided in Section VIII (Stipulated Penalties).

5 **XI. INFORMATION COLLECTION AND RETENTION**

6 50. The United States, DOH, and their representatives, including attorneys,
7 contractors, and consultants, shall have the right of entry into any facility covered by this Consent
8 Decree, at all reasonable times, upon presentation of credentials, to:

- 9 a. monitor the progress of activities required under this Consent Decree;
- 10 b. verify any data or information submitted to the United States or DOH in
11 accordance with the terms of this Consent Decree;
- 12 c. obtain samples and, upon request, splits of any samples taken by HDOT or
13 its representatives, contractors, or consultants;
- 14 d. obtain documentary evidence, including photographs and similar data; and
- 15 e. assess HDOT's compliance with this Consent Decree.

16 51. Upon request, HDOT shall provide EPA and DOH, or their authorized
17 representatives, splits of any samples taken by HDOT. Upon request, EPA and DOH shall
18 provide HDOT splits of any samples taken by EPA or DOH.

19 52. Until five years after the termination of this Consent Decree, HDOT shall retain,
20 and shall instruct its contractors and agents to preserve, all non-identical copies of all documents,
21 records, or other information (including documents, records, or other information in electronic
22 form) in its or its contractors' or agents' possession or control, or that come into its or its
23 contractors' or agents' possession or control, and that relates in any manner to HDOT's perfor-
24 mance of its obligations under this Consent Decree. This information-retention requirement shall
25 apply regardless of any contrary institutional policies or procedures. At any time during this
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1 information-retention period, the United States or DOH may request copies of any documents,
2 records, or other information required to be maintained under this Paragraph.

3 53. At the conclusion of the information-retention period provided in the preceding
4 Paragraph, HDOT shall notify the United States and DOH at least 90 days prior to the destruction
5 of any documents, records, or other information subject to the requirements of the preceding
6 Paragraph and, upon request by the United States or DOH, HDOT shall deliver any such
7 documents, records, or other information to EPA or DOH. HDOT may assert that certain
8 documents, records, or other information is privileged under the attorney-client privilege or any
9 other privilege recognized by federal law. If HDOT asserts such a privilege, it shall provide the
10 following: (a) the title of the document, record, or information; (b) the date of the document,
11 record, or information; (c) the name and title of each author of the document, record, or
12 information; (d) the name and title of each addressee and recipient; (e) a description of the
13 subject of the document, record, or information; and (f) the privilege asserted by HDOT.
14 However, no documents, records, or other information created or generated pursuant to the
15 requirements of this Consent Decree shall be withheld on grounds of privilege.

16 54. HDOT may also assert that information required to be provided under this Section
17 is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any
18 information that HDOT seeks to protect as CBI, HDOT shall follow the procedures set forth in
19 40 C.F.R. Part 2.

20 55. This Consent Decree in no way limits or affects any right of entry and inspection,
21 or any right to obtain information, held by the United States or DOH pursuant to applicable
22 federal or State laws, regulations, or permits, nor does it limit or affect any duty or obligation of
23 HDOT to maintain documents, records, or other information imposed by applicable federal or
24 State laws, regulations, or permits.

25 **XII. EFFECT OF SETTLEMENT**

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1 56. This Consent Decree resolves the civil claims of the United States and DOH for
2 the violations alleged in the Complaint filed in this action through the date of lodging.

3 57. The United States and DOH reserve all legal and equitable remedies available to
4 enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 56. This
5 Consent Decree shall not be construed to limit the rights of the United States or DOH to obtain
6 penalties or injunctive relief under the Act or its implementing regulations, or under other federal
7 or State laws, regulations, or permit conditions, except as expressly specified in Paragraph 56.

8 58. This Consent Decree is not a permit, or a modification of any permit, under any
9 federal, State, or local laws or regulations. HDOT is responsible for achieving and maintaining
10 complete compliance with all applicable federal, State, and local laws, regulations, and permits;
11 and HDOT's compliance with this Consent Decree shall be no defense to any action commenced
12 pursuant to any such laws, regulations, or permits. The United States and DOH do not, by their
13 consent to the entry of this Consent Decree, warrant or aver in any manner that HDOT's
14 compliance with any aspect of this Consent Decree will result in compliance with provisions of
15 the Act or its implementing regulations or with any other provisions of federal, State, or local
16 laws, regulations, or permits. Notwithstanding the United States' or DOH's review and approval
17 of any data, reports, or plans submitted pursuant to this Decree, HDOT shall remain solely
18 responsible for compliance with this Decree.

19 59. This Consent Decree does not limit or affect the rights of HDOT or of the United
20 States or DOH against any third parties, not party to this Consent Decree, nor does it limit the
21 rights of third parties, not party to this Consent Decree, against HDOT, except as otherwise
22 provided by law.

23 60. This Consent Decree shall not be construed to create rights in, or grant any cause
24 of action to, any third party not party to this Consent Decree.

25 **XIII. MISCELLANEOUS**
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1 61. Headings. Headings in this Decree are provided for convenience only and shall
2 not affect the substance of any provision.

3 62. Costs of Suit. The Parties shall bear their own costs of this action, including
4 attorneys' fees, except that the United States and DOH shall be entitled to collect the costs
5 (including attorneys' fees) incurred in any action necessary to collect any portion of the civil
6 penalty or any Stipulated Penalties due but not paid by HDOT.

7 **XIV. NOTIFICATION**

8 63. When written notification or communication is required by the terms of this
9 Decree, such notification or communication shall be addressed to the following individuals at the
10 addresses specified below (or to such other addresses as may be thereafter designated by written
11 notice to the parties):

12 As to the United States:

13 Chief, Environmental Enforcement Section
14 Environment & Natural Resources Division
15 U.S. Department of Justice
16 Box 7611, Ben Franklin Station
17 Washington, D.C. 20044-7611
18 Re: DOJ #90-5-1-1-07488

19 and

20 Kathi Moore (WTR -7)
21 Chief, CWA Compliance Office
22 U.S. EPA, Region 9
23 75 Hawthorne St.
24 San Francisco, CA 94105
25 (415) 972-3505

26 As to EPA:

27 Kathi Moore (WTR -7)
28 Chief, CWA Compliance Office
29 U.S. EPA, Region 9
30 75 Hawthorne St.
31 San Francisco, CA 94105
32 (415) 972-3505

1 As to DOH:

2 Denis Lau
3 Chief, Clean Water Branch
4 Hawai'i State Department of Health
5 919 Ala Moana Blvd., Room 301
6 Honolulu, Hawai'i 96814
7 (808) 586-4309

8 and

9 Kathleen S. Ho
10 Deputy Attorney General
11 Health and Human Services Division
12 Department of the Attorney General
13 State of Hawai'i
14 465 South King Street, Room 200
15 Honolulu, Hawai'i 96813
16 (808) 587-3062

17 As to HDOT:

18 Rodney K. Haraga
19 Director, Department of Transportation
20 869 Punchbowl Street
21 Honolulu, Hawai'i 96813
22 (808) 587-2150

23 and

24 Jeffery S. Kato
25 Deputy Attorney General
26 Land and Transportation Division
27 Department of the Attorney General
28 State of Hawai'i
29 465 South King Street, Room 300
30 Honolulu, Hawai'i 96813
31 (808) 587-2994

32 64. Notifications to or communications with HDOT, DOH, EPA, or the United States
33 shall be deemed submitted:

- 34 a. when required to be sent by mail, on the date they are postmarked and sent
35 by certified mail, return receipt requested;

b. when required to be sent by overnight delivery, on the date they are picked up by the overnight delivery service; or

c. when required to be made electronically, on the date they are sent by electronic mail with confirmation of receipt.

XV. MODIFICATION AND TERMINATION

65. Modification. The deadlines set forth in Sections V (Injunctive Relief) and VII (Supplemental Environmental Project) of this Decree may be modified, and those and other non-material modifications of this Decree shall be made by written agreement of the parties, with notification to the Court. Where any modification constitutes a material change to any term of this Decree, it shall be effective only upon written agreement of the Parties and approval by the Court.

66. Request to Terminate Decree. No sooner than 5 years after entry of this Decree, HDOT may request the United States and DOH's consent to termination of this Decree. In seeking such consent, HDOT shall provide a written report to the United States and DOH that demonstrates:

a. HDOT has paid all civil penalties, Stipulated Penalties, and interest due under this Decree;

b. There are no unresolved matters subject to Dispute Resolution pursuant to Section X (Dispute Resolution);

c. No enforcement action under this Decree is pending;

d. HDOT has fully and successfully completed the compliance requirements set forth in Section V (Injunctive Relief); and

e. HDOT has fully and successfully completed all SEP requirements set forth in Section VII.

67. Response to Request for Termination

a. If the United States and DOH agree that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

b. If the United States and DOH do not agree that the Decree may be terminated, HDOT may invoke Dispute Resolution under Section X of this Decree. However, HDOT shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 47 of Section X, until 60 days after service of its Request for Termination.

XVI. INTEGRATION

68. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and submittals that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XVII. APPENDICES

69. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the Definition of High Priority Watersheds:

“Appendix B” is the Highway Segments and Sweeping Frequencies

“Appendix C” is the Drainage System Inspection and Cleaning Schedule

“Appendix D” is the High Priority Areas for Erosion Control Measures

"Appendix E" is the EMS SEP

“Appendix F” is the Compliance Assistance Workshops SEP

"Appendix G" is the list of DOT Facilities with CCH Manuals

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75. Retention of Jurisdiction. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XV, or effectuating or enforcing compliance with the terms of this Decree.

SO ORDERED THIS _____ DAY OF _____, 2005

UNITED STATES DISTRICT JUDGE

1 We hereby consent to entry of the foregoing Consent Decree, subject to the Notice and Comment
2 Provisions of 28 C.F.R. § 50.7 and Paragraph 73 of this Decree:

3
4 FOR THE UNITED STATES OF AMERICA

5
6 Date: 9/27/05

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

7
8
9
10 Date: 9/27/05

ANGELA O'CONNELL
CYNTHIA HUBER
Senior Attorneys
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-5273

1 We hereby consent to entry of the foregoing Consent Decree, subject to the Notice and Comment
2 Provisions of 28 C.F.R. § 50.7 and Paragraph 73 of this Decree:

3
4 Date: 28 SEP 05

GRANTA W/NAKAYAMA
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building, 2241-A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

9
10 Date: 14 SEP 05

WAYNE NASTRI
Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

14 OF COUNSEL:

15 LAURIE KERMISH
16 Assistant Regional Counsel
17 U.S. EPA, Region 9
18 75 Hawthorne Street
19 San Francisco, California 94105
20 (415) 972-3917
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FOR THE HAWAII DEPARTMENT OF
HEALTH

Date: AUG 15 2005

Chiyome Leinaka Fukino, M.D.
Director of Health
State of Hawai'i
1250 Punchbowl Street
Honolulu, Hawai'i 96813

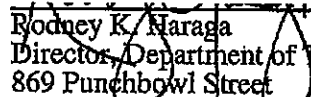
APPROVED AS TO FORM:

Kathleen S. Ho
Deputy Attorney General

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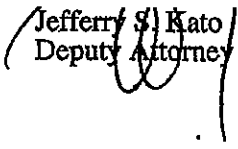
FOR DEFENDANT, HAWAII DEPARTMENT
OF TRANSPORTATION

Date: SEP - 1 2005



Rodney K. Naraga
Director, Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813

APPROVED AS TO FORM:



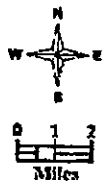
Jeffery S. Kato
Deputy Attorney General

Route No.	Route Name	Overall				Start MP	Map	End MP	Map
		Start MP	Map	End MP	Map				
H-1	H-1 Fwy.	0.00 (Palalai I/C)	A2	27.16 (Alinakoa Ave.)	A4	5.11 (EB Off-Ramp to Ft. Weaver Rd., Kunila Rd.)	A2	15.22 (Kam. Hwy. O/P)	A3
						18.28 (0.2 ml after EB Off-Ramp to Dillingham Blvd.)	A3	19.36 (Gulick Ave. O/P)	A3
						20.80 (Liliha St. O/P)	A3	22.59 (Piikoi St. U/P)	A4
						23.18 (Punahou St. O/P)	A4	24.43 (EB Off-Ramp to King St.)	A4
						24.83 (Kapiolani I/C at Kapahulu Ave.)	A4	25.55 (10th Ave. U.P.)	A4
H-2	H-2 Fwy.	0.00 (Waiawa I/C)	A2	8.33 (Wilikina Dr.)	A1	0.00 (Waiawa I/C)	A2	8.33 (Wilikina Dr.)	A1
H-3	H-3 Fwy.	0.00 (Halawa I/C)	A3	15.32 (MCBH-Kaneohe)	A4	0.00 (Halawa I/C)	A3	6.47 (End H3 Tunnel, Kaneohe Bound)	A4
						7.47 (One Mile After H- 3 Tunnel Exit, Kaneohe Bound)	A4	13.66 (0.25 mile After Kailua Separation)	A4
H-201	Moanalua Fwy.	0.00 (Rte. 78/ Halawa I/C)	A3	4.09 (Middle St. I/C)	A3	0.00 (Rte. 78/ Halawa I/C)	A3	1.50 (Aia Kapuna Rd. O/P)	A3
61	Pali Hwy., Kalaniana'ole Hwy., Kailua Rd.	0.00 (Vineyard Blvd.)	A3	10.60 (Kawainui Br.)	A4	0.00 (Vineyard Blvd.)	A3	10.60 (Kawainui Br.)	A4
63	Kalihi St., Likelike Hwy.	0.00 (Nimitz Hwy.)	A3	8.28 (Kahakili Hwy.)	A4	1.42 (Kalihi St. North of Kam. Shopping Center)	A3	8.28 (Kahakili Hwy.)	A4
64	Sand Island Pkwy. and Access Rd.	0.00 (S.I. Park)	A4	2.60 (Nimitz Hwy.)	A3	0.00 (S.I. Park)	A4	1.40 (Begin Bascule Bridge)	A3
						1.53 (End Bascule Bridge)	A3	2.60 (Nimitz Hwy.)	A3
65	Kaneohe Bay Dr., Mokapu Blvd.	0.00 (Kam. Hwy.)	A4	4.15 (Kalaheo Ave.)	A4	0.00 (Kam. Hwy.)	A4	4.15 (Kalaheo Ave.)	A4
72	Kalaniana'ole Hwy.	0.00 (Kailua Rd.)	A4	18.46 (Alinakoa Ave.)	A4	0.00 (Kailua Rd.)	A4	3.35 (Poalima St.)	A4
76	Ft. Weaver Rd., Kunia Rd.	0.00 (Iroquois Gate)	A2	6.64 (H-1)	A2	6.01 (Farr. Hwy.)	A2	6.64 (H-1)	A2

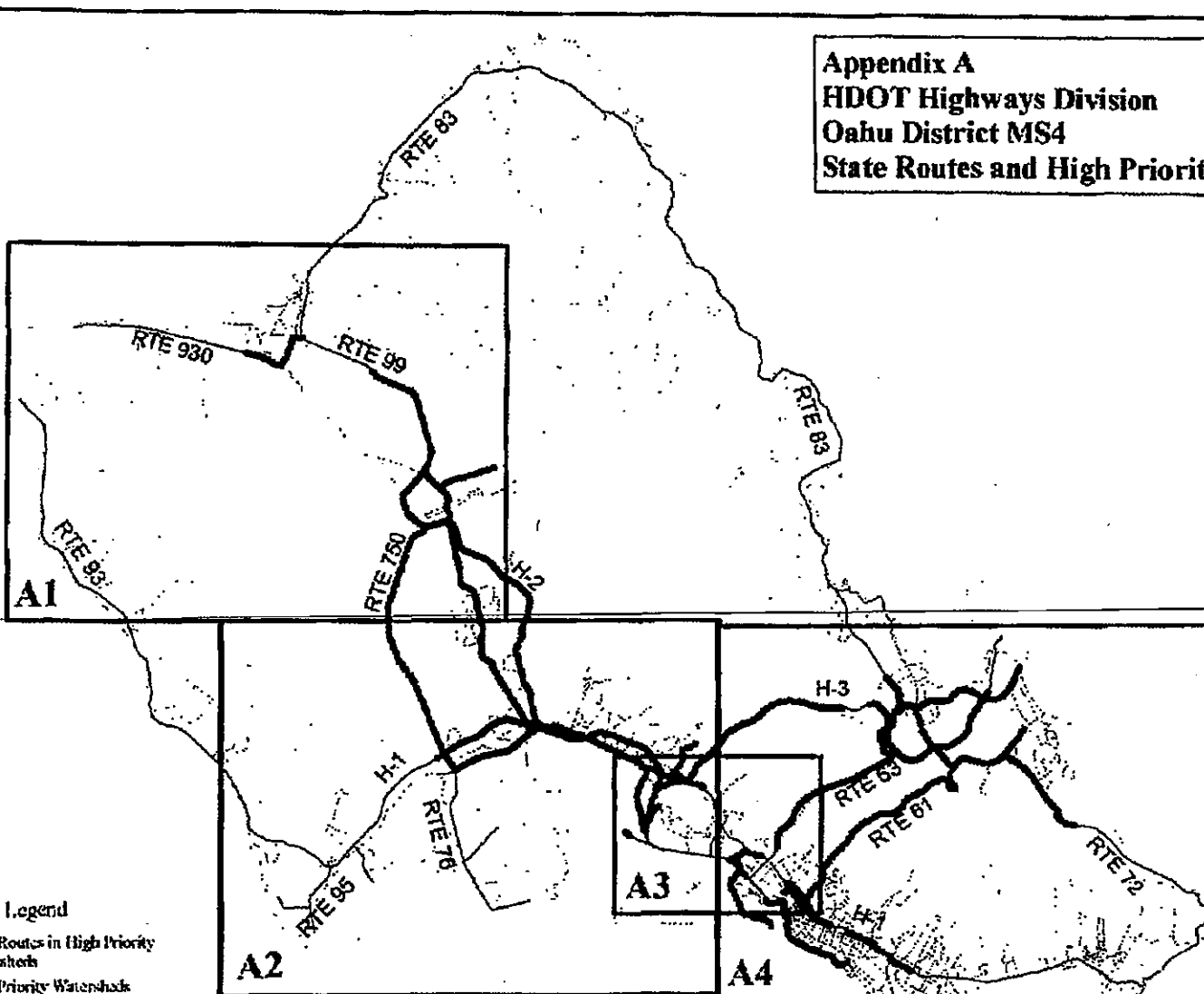
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78	Moanalua Fwy.	0.00 Alea I/C	A3	0.74 (Rte. H-201/ Halawa I/C)	A3	0.00 Alea I/C	A3	0.74 (Rte. H-201/ Halawa I/C)	A3
80	Kamehameha Hwy.	0.00 (Wilikina Dr.)	A1	1.88 (Kamananui Rd.)	A1	0.00 (Wilikina Dr.)	A1	1.88 (Kamananui Rd.)	A1
83	Kamehameha Hwy., Kahekill Hwy., Likelike Hwy.	0.00 (Weed Circle)	A1	43.92 (Pali Hwy.)	A4	39.59 (Haiku Rd.)	A4	43.92 (Pali Hwy.)	A4
92	Nimitz Hwy., Ala Moana Blvd.	0.00 (Pearl Harbor Main Gate)	A3	9.26 (Kalakaua Ave.)	A4	0.00 (Pearl Harbor Main Gate)	A3	0.24 (On Ramp from O'Malley Blvd.- Hickam Main Gate)	
						3.52 (Middle St.)	A3	4.28 (Mokauea St.)	A3
						5.27 (Rd. to Chevron Oil)	A3	9.26 (Kalakaua Ave.)	A4
93	Farrington Hwy.	0.00 (Palala I/C)	A2	19.53 (Kaena Pt.)	A1				
95	Kalaeloa Blvd., Malakole St.	0.00 (Palala I/C)	A2	2.68 (Access Rd. Leading to Storage Yard)	A2				
98	Vineyard Blvd.	0.00 (Olomea St. @ H-1 Offramp)	A3	1.76 (Ramp to H-1 EB)	A4	0.34 (Pua Lane)	A3	1.76 (Ramp to H-1 EB)	A4
99	Kamehameha Hwy., Kamananui Rd., Wilikina Dr., Farrington Hwy.	0.00 (Weed Circle)	A1	23.83 (Pearl Harbor I/C)	A3	2.50 (2.50 Miles Mauka of Weed Circle)	A1	23.31 (Above H-1 Fwy. and EB Nimitz/Hickam Off-Ramp)	A3
750	Kunia Rd.	0.00 (H-1)	A2	8.05 (Wilikina Dr.)	A1	0.00 (H-1)	A2	8.05 (Wilikina Dr.)	A1
901	Ft. Barrette Rd.	0.00 (Barbers Pt. Rd.)	A2	1.38 (Makakilo O/P)	A2				
930	Farrington Hwy., Kaukonahua Rd.	0.00 (Kaena Pt.)	A1	7.92 (Weed Circle)	A1	5.52 (Puuliki St.)	A1	7.92 (Weed Circle)	A1
7012	Whitmore Ave.	0.00 (Kam. Hwy.)	A1	1.90 (Naval Comm. Sta.)	A1	0.00 (Kam. Hwy.)	A1	1.90 (Naval Comm. Sta.)	A1
7101	Farrington Hwy.	0.00 (Kunia Rd.)	A2	3.00 (Kam. Hwy. - Pearl City)	A2	0.00 (Kunia Rd.)	A2	3.00 (Kam. Hwy. - Pearl City)	A2
7110	Farrington Hwy.	0.00 (Kunia Rd.)	A2	0.62 (Old Ft. Weaver Rd.)	A2				
7141	Iroquois Rd.	0.00 (Ft. Weaver Rd.)	A2	1.51 (West Loch)	A2				
7239	Ulune St., Halawa Valley Rd.	0.00 (Kahuapaani St.)	A3	0.32 (Iwaiwa St.)	A3	0.00 (Kahuapaani St.)	A3	0.32 (Iwaiwa St.)	A3

Route No.	Route Name	Overall							
		Start MP	Map	End MP	Map	Start MP	Map	End MP	Map
7241	Kahuapaani St., Halawa Hts. Rd.	0.00 (Salt Lake Blvd.)	A3	2.32 (Camp Smith)	A2	0.00 (Salt Lake Blvd.)	A3	2.32 (Camp Smith)	A2
7310	Puuloa Rd.	0.00 (Kam./Nimitz Hwy.)	A3	1.03 (Moanalua Fwy.)	A3				
7345	Jarrette White Rd.	0.00 (Moanalua Fwy.)	A3	0.55 (Tripler Hospital)	A3				
7350	Bouganville Dr.	0.00 (Radford Dr.)	A3	0.59 (Salt Lake Blvd.)	A3	0.00 (Radford Dr.)	A3	0.59 (Salt Lake Blvd.)	A3
7351	Radford Dr.	0.00 (Kam. Hwy.)	A3	0.23 (Bouganville Dr.)	A3	0.00 (Kam Hwy.)	A3	0.23 (Bouganville Dr.)	A3
7401	Kamehameha Hwy.	0.00 (Middle St.)	A3	0.10 (100' East of Kalihi Stream Bridge)	A3	0.00 (Middle St.)	A3	0.10 (100' East of Kalihi Stream Bridge)	A3
7413	Liliha St.	0.00 (King St.)	A3	0.35 (H-1 Liliha St. O/P)	A3	0.00 (King St.)	A3	0.35 (H-1 Liliha St. O/P)	A3
7415	Middle St.	0.00 (Kaua St.)	A3	0.51 (Kam. Hwy.)	A3	0.00 (Kaua St.)	A3	0.51 (Kam. Hwy.)	A3
7601	Old Waialae Rd.	0.00 (Kapiolani Blvd.)	A4	0.41 (King St.)	A4				

Based on Oahu 303d High Priority Watersheds and DOT Highways and Conveyances, as prepared by DOH-EPO.



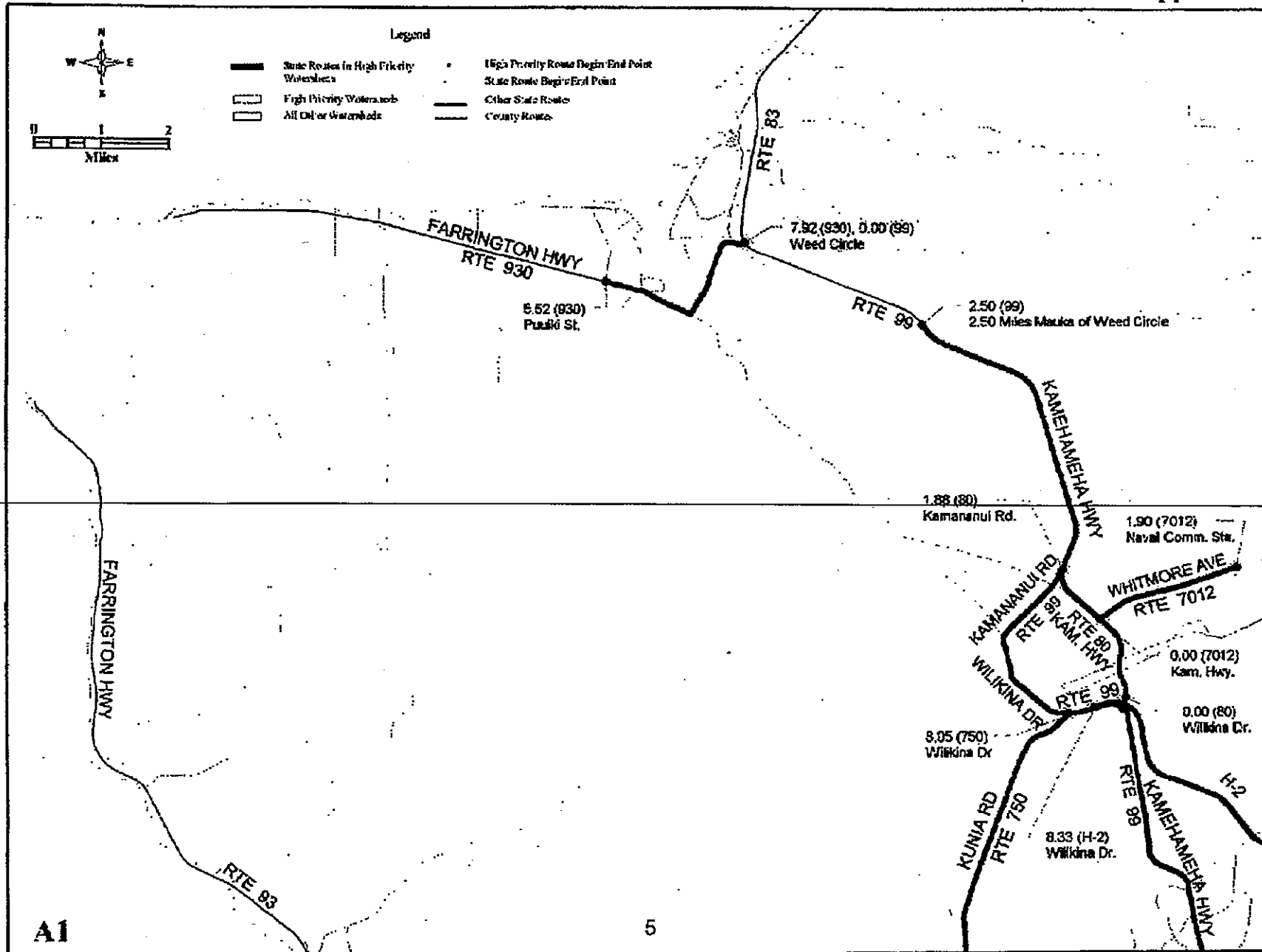
Appendix A
HDOT Highways Division
Oahu District MS4
State Routes and High Priority Watersheds

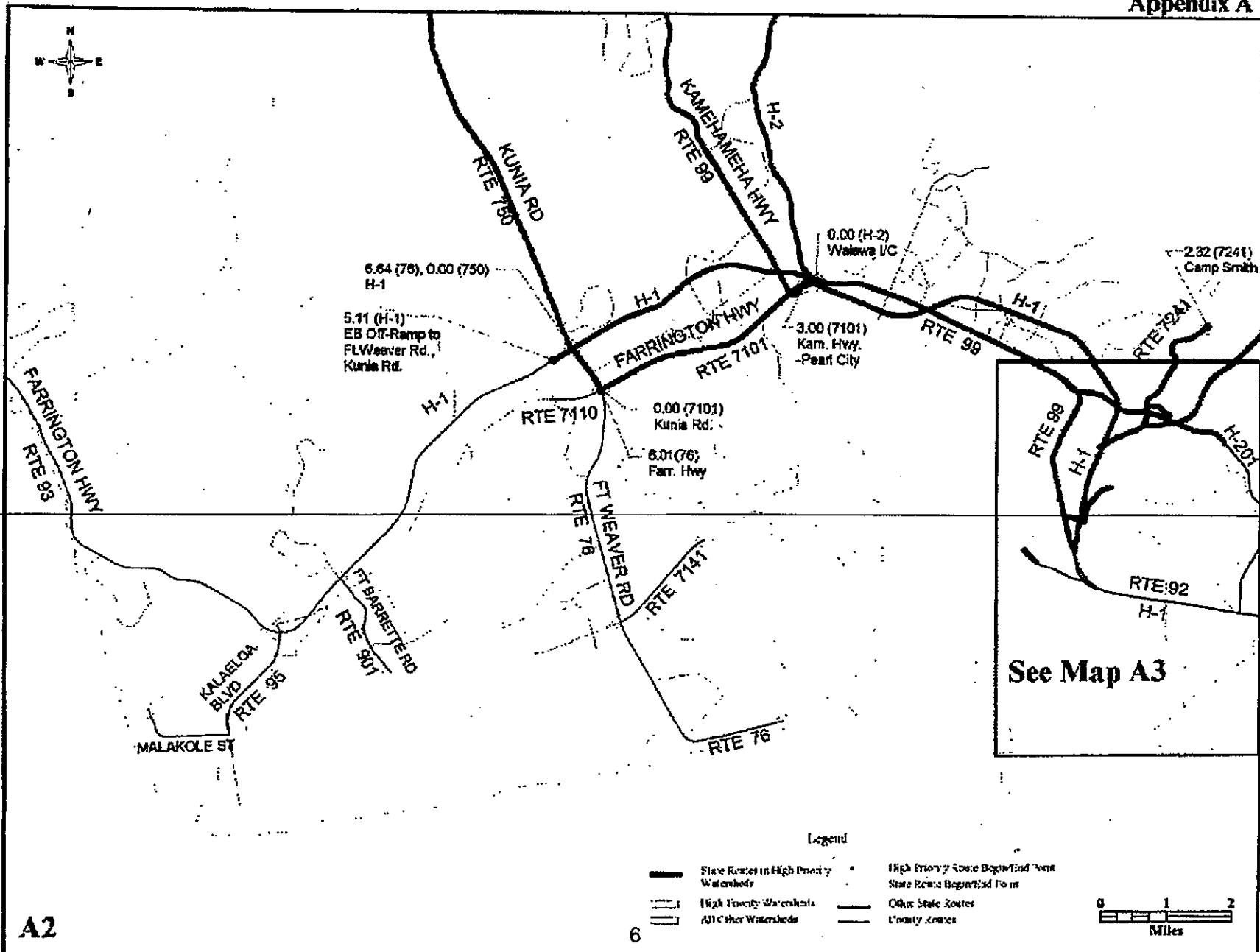


- Legend**
- State Routes in High Priority Watersheds
 - High Priority Watersheds
 - All Other Watersheds
 - Other State Routes
 - County Routes

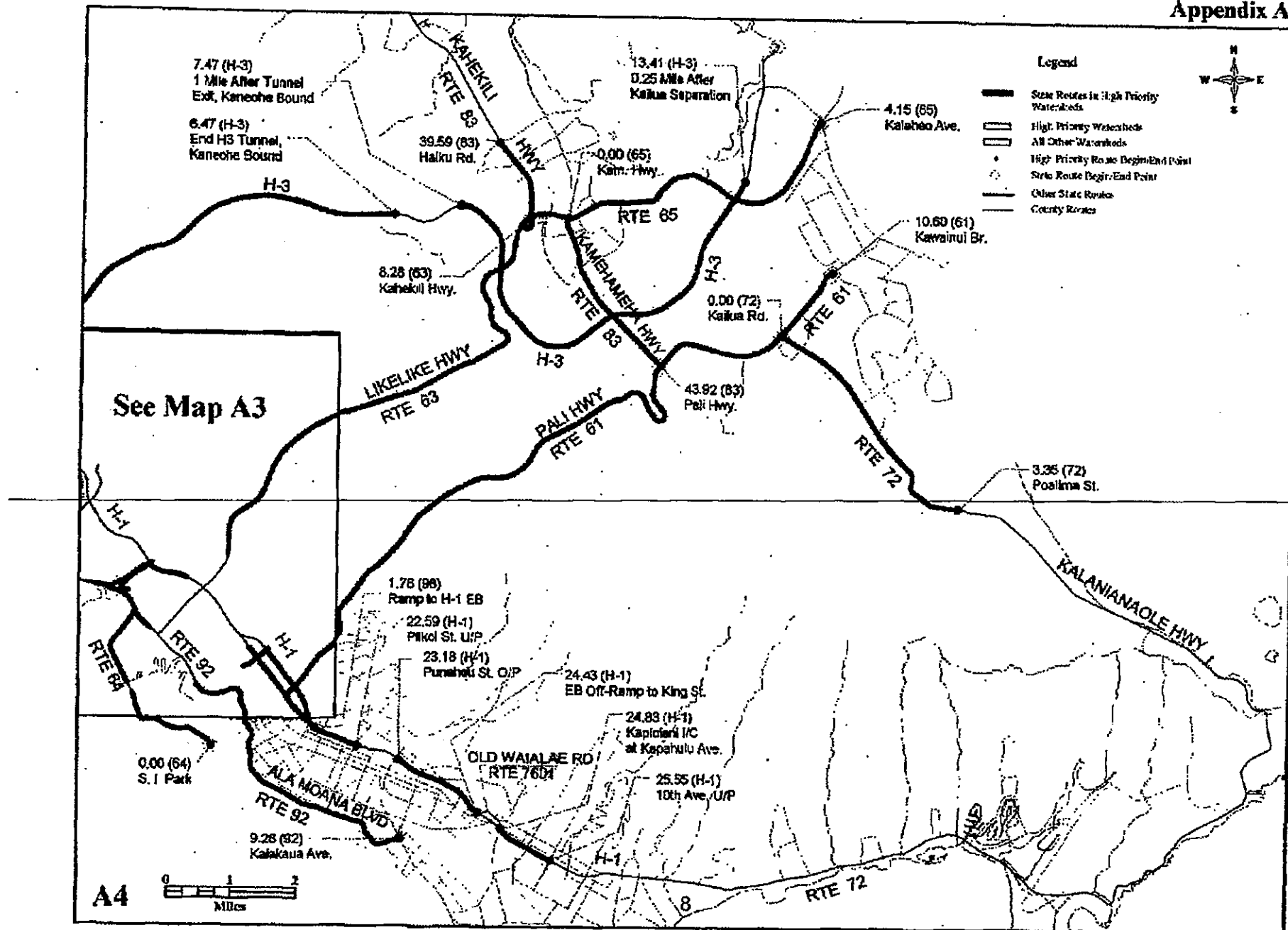
Index Map

Appendix A









Appendix B
Street Sweeping

03/22/05

Route No.	Route Name	Overall Segment Requiring Sweeping				High Priority Watersheds (To Be Swept Every 5 Weeks)								Start MP	Map	End MP	Map
		Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map				
H-1	H-1 Fwy.	0.00 (Palala I/C)	B2	27.16 (Aiea Ave.)	B4	5.11 (EB Off-Ramp to FL Weaver Rd., Kunia Rd.)	B2	15.22 (Kam. Hwy. O/P)	B3	0.00 (Palala I/C)	B2	5.11 (EB Off-Ramp to FL Weaver Rd., Kunia Rd.)	B2				
						18.31 (0.2 mi after EB Off- Ramp to Dillingham Bld.)	B3	19.36 (Gulick Ave. O/P)	B3	15.22 (Kam. Hwy. O/P)	B3	18.31 (0.2 mi after EB Off- Ramp to Dillingham Bld.)	B3				
						20.60 (Liha St. O/P)	B3	22.69 (Piikoi St. U/P)	B4	19.36 (Gulick Ave. O/P)	B3	20.60 (Liha St. O/P)	B3				
						23.18 (Punahou St. O/P)	B4	24.43 (Off-Ramp to King St.)	B4	22.59 (Piikoi St. U/P)	B4	23.18 (Punahou St. O/P)	B4				
						24.83 (Kapiolani I/C at Kapihulu Ave.)	B4	25.55 (10th Ave. U/P)	B4	24.43 (EB Off-Ramp to King St.)	B4	24.83 (Kapiolani I/C at Kapihulu Ave.)	B4				
H-2	H-2 Fwy.	0.00 (Waiala I/C)	B2	8.33 (Waiaina Dr.)	B1	0.00 (Waiala I/C)	B2	8.33 (Waiaina Dr.)	B1								
H-3	H-3 Fwy.	0.00 (Halawa I/C)	B3	15.32 (MCBH-Kaneohe)	B4	0.00 (Halawa I/C)	B3	6.47 (End Kaneohe Bound H-3 Tunnel)	B4	6.47 (End Kaneohe Bound H-3 Tunnel)	B4	7.47 (One Mile After H-3 Tunnel Exit, Kaneohe Bound)	B4				
						7.47 (One Mile After H-3 Tunnel Exit, Kaneohe Bound)	B4	13.66 (0.25 mile After Kailua Separation)	B4	13.66 (0.25 mile After Kailua Separation)	B4	15.32 (MCBH-Kaneohe)	B4				
H-201	Moanalua Fwy.	0.00 (Rte. 78/ Halawa I/C)	B3	4.09 (Middle St. I/C)	B3	0.00 (Rte. 78/ Halawa I/C)	B3	1.50 (Ala Kapuna Rd. O/P)	B3	1.50 (Ala Kapuna Rd. O/P)	B3	4.09 (Middle St. I/C)	B3				
61	Pali Hwy., Kalanianaʻole Hwy., Kaliua Rd.	0.00 (Vineyard Blvd.)	B3	10.60 (Kawainui Br.)	B4	0.00 (Vineyard Blvd.)	B3	10.60 (Kawainui Br.)	B4								

Street Sweeping

08/22/05

Route No.	Route Name	Overall Segment Requiring Sweeping				High Priority Watersheds (To Be Swept Every 5 Weeks)											
		Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map
63	Kalihi St., Likelike Hwy.	0.00 (Nimitz Hwy.)	B3	8.28 (Kahakū Hwy.)	B4	1.42 (Kalihi St. North of Kam. Shopping Ctr.)	B3	8.28 (Kahakū Hwy.)	B4					0.00 (Nimitz Hwy.)	B3	1.42 (Kalihi St. North of Kam. Shopping Ctr.)	B3
64	Sand Island Pkwy. and Access Rd.	0.00 (S.I. Park)	B3	2.60 (Nimitz Hwy.)	B3	0.00 (S.I. Park)	B4	1.40 (Begin Bascule Bridge)	B3					1.40 (Begin Bascule Bridge)	B3	1.53 (End Bascule Bridge)	B3
						1.53 (End Bascule Bridge)	B3	2.60 (Nimitz Hwy.)	B3								
65	Kaneohe Bay Dr., Mokapu Blvd.	0.00 (Kam. Hwy.)	B4	4.15 (Kalaheo Ave.)	B4	0.00 (Kam. Hwy.)	B4	4.15 (Kalaheo Ave.)	B4								
72	Kalanianaʻōle Hwy.	0.00 (Kaliua Rd.)	B4	18.48 (Aiea Ave.)	B4	0.00 (Kaliua Rd.)	B4	3.35 (Poalima St.)	B4	13.26 (Lunalilo Hm. Rd.)	B4	18.46 (Aiea Ave.)	B4	3.35 (Poalima St.)	B4	13.26 (Lunalilo Hm. Rd.)	B4
76	Ft. Weaver Rd., Kunia Rd.	0.00 (Iroquois Gate)	B2	6.64 (H-1)	B2	6.01 (Farr. Hwy.)	B2	6.64 (H-1)	B2					0.00 (Iroquois Gate)	B2	6.01 (Farr. Hwy.)	B2
78	Meaekaha Fwy.	0.00 Aiea I/C	B3	0.74 (Rte. H-201)	B3	0.00 Aiea I/C	B3	0.74 (Rte. H-201/ Malama UC)	B3								
80	Kamehameha Hwy.	0.00 (Wilikina Dr.)	B1	1.88 (Kamalanui Rd.)	B1	0.00 (Wilikina Dr.)	B1	1.88 (Kamalanui Rd.)	B1								
83	Kamehameha Hwy., Kahakū Hwy., Likelike Hwy.	0.00 (Weed Circle)	B1	43.92 (Pali Hwy.)	B4	39.92 (Kahukū Rd.)	B4	43.92 (Pali Hwy.)	B4					0.00 (Weed Circle)	B1	39.92 (Kahukū Rd.)	B4
92	Nimitz Hwy., Ala Moana Blvd.	0.00 (Pearl Harbor Main Gate)	B3	9.26 (Kalaheo Ave.)	B4	0.00 (Pearl Harbor Main Gate)	B3	0.24 (On-Ramp from O'Malley Blvd. - Hickam Main Gate)	B3					0.24 (On-Ramp from O'Malley Blvd. - Hickam Main Gate)	B3	3.52 (Middle St.)	B3
						3.52 (Middle St.)	B3	4.28 (Mokaua St.)	B3	4.28 (Mokaua St.)	B3	5.27 (Rd. to Chevron Oil)	B3				
						5.27 (Rd. to Chevron Oil)	B3	9.26 (Kalaheo Ave.)	B4								

Street Sweeping

08/22/05

Route No.	Route Name	Overall Segment Requiring Sweeping				High Priority Watersheds (To Be Swept Every 5 Weeks)											
		Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map
93	Farrington Hwy.	0.00 (Palalai I/C)	B2	19.53 (Kaena Pt.)	B1									0.00 (Palalai I/C)	B2	19.53 (Kaena Pt.)	B1
95	Kalaheo Blvd., Malakole St.	0.00 (Palalai I/C)	B2	2.68 (Access Rd. Leading to Storage Yard)	B2									0.00 (Palalai I/C)	B2	2.68 (Access Rd. Leading to Storage Yard)	B2
98	Vineyard Blvd.	0.00 (Olomea St. @ H-1 EB Off-Ramp)	B3	1.76 (Ramp to H-1 EB)	B3	0.34 (Pua Lane)	B3	1.76 (Ramp to H-1 EB)	B4	0.00 (Olomea St. @ H-1 EB Off-Ramp)	B3	0.34 (Pua Lane)	B3				
99	Kamehameha Hwy., Kamananui Rd., Wilikina Dr., Farrington Hwy.	0.00 (Weed Circle)	B1	23.83 (Pearl Harbor I/C)	B3	2.50 (2.5 Miles Mauka of Weed Circle)	B1	23.31 (Above H-1 Fwy. and EB Nimitz/Hickam Off-Ramp)	B3	23.31 (Above H-1 Fwy. and EB Nimitz/Hickam Off-Ramp)	B3	23.83 (Pearl Harbor I/C)	B3	0.00 (Weed Circle)	B1	2.50 (2.5 Miles Mauka of Weed Circle)	B1
750	Kunia Rd.	0.00 (H-1)	B2	8.05 (Wilikina Dr.)	B1	0.00 (H-1)	B2	8.05 (Wilikina Dr.)	B1								
901	Fl. Barrette Rd.	0.00 (Barbers Pt. Rd.)	B2	1.38 (Makakilo O/P)	B2									0.00 (Barbers Pt. Rd.)	B2	1.38 (Makakilo O/P)	B2
930	Farrington Hwy., Kaukonahua Rd.	0.00 (Kaena Pt.)	B1	7.92 (Weed Circle)	B1	5.52 (Puukid St.)	B1	7.92 (Weed Circle)	B1					0.00 (Kaena Pt.)	B1	5.52 (Puukid St.)	B1
7012	Whitmore Ave.	0.00 (Kam. Hwy.)	B1	1.90 (Naval Comm. Sta.)	B1	0.00 (Kam. Hwy.)	B1	1.90 (Naval Comm. Sta.)	B1								
7101	Farrington Hwy.	0.00 (Kunia Rd.)	B2	3.00 (Kam. Hwy. - Pearl City)	B2	0.00 (Kunia Rd.)	B2	3.00 (Kam. Hwy. - Pearl City)	B2								
7110	Farrington Hwy.	0.00 (Kunia Rd.)	B2	0.62 (Old Ft. Weaver Rd.)	B2									0.00 (Kunia Rd.)	B2	0.62 (Old Ft. Weaver Rd.)	B2
7141	Iroquois Rd.	0.00 (Ft. Weaver Rd.)	B2	1.51 (West Loch)	B2									0.00 (Ft. Weaver Rd.)	B2	1.51 (West Loch)	B2
7239	Ulune St., Halewa Valley Rd.	0.00 (Kahuapeani St.)	B3	0.32 (Iwaiwa St.)	B3	0.00 (Kahuapeani St.)	B3	0.32 (Iwaiwa St.)	B3								
7241	Kahuapeani St., Halewa Hts. Rd.	0.00 (Salt Lake Blvd.)	B3	2.32 (Camp Smith)	B3	0.00 (Salt Lake Blvd.)	B3	2.32 (Camp Smith)	B2								

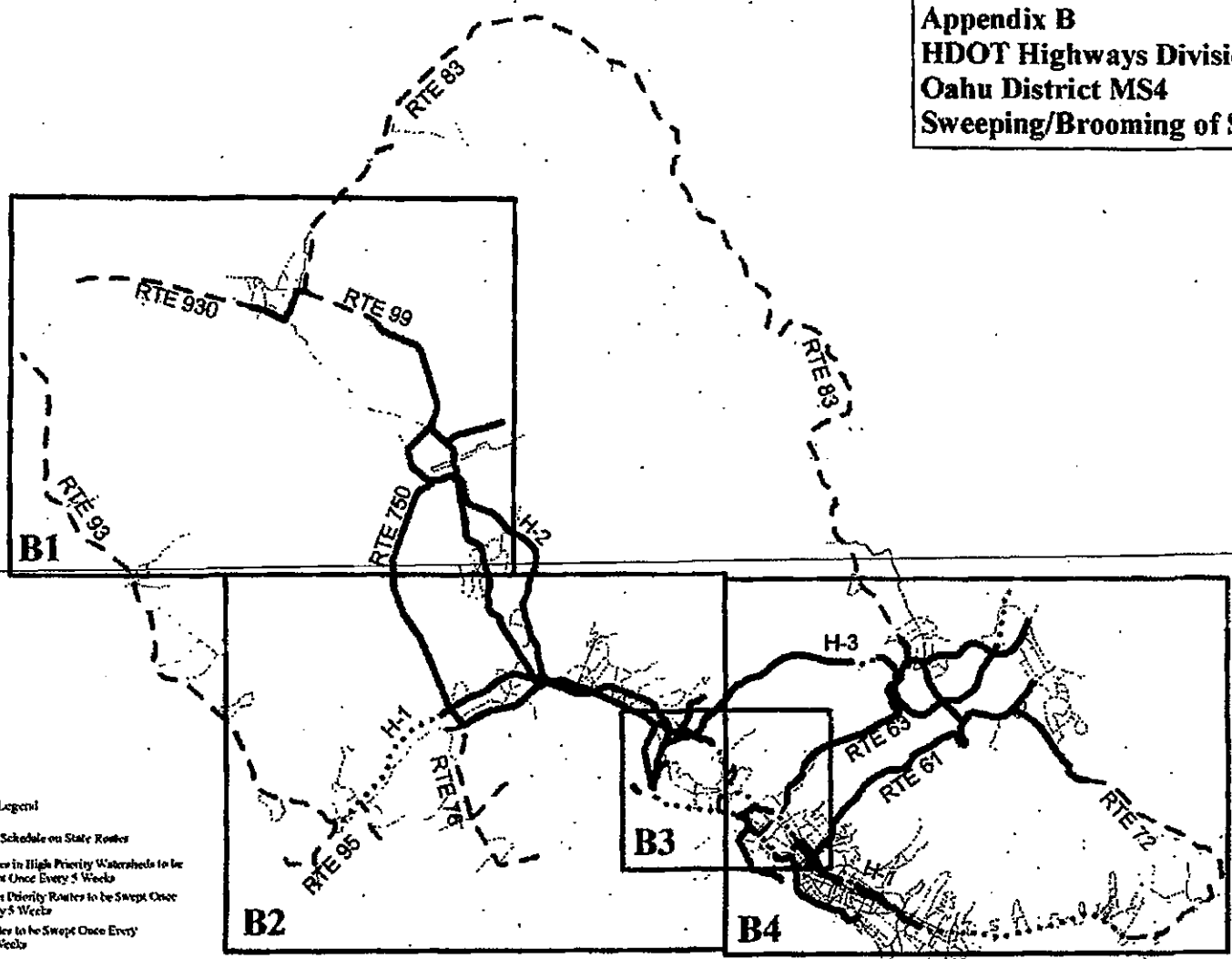
Street Sweeping

08/22/05

Route No.	Route Name	Overall Segment Requiring Sweeping				High Priority Watersheds (To Be Swept Every 5 Weeks)											
		Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map	Start MP	Map	End MP	Map
7310	Puuloa Rd.	0.00 (Kam./Nimitz Hwy.)	B3	1.03 (Moanalua Fwy.)	B3									0.00 (Kam./Nimitz Hwy.)	B3	1.03 (Moanalua Fwy.)	B3
7345	Jarrette White Rd.	0.00 (Moanalua Fwy.)	B3	0.55 (Tripler Hospital)	B3									0.00 (Moanalua Fwy.)	B3	0.55 (Tripler Hospital)	B3
7350	Bouganville Dr.	0.00 (Redford Dr.)	B3	0.59 (Salt Lake Blvd.)	B3	0.00 (Redford Dr.)	B3	0.59 (Salt Lake Blvd.)	B3								
7351	Redford Dr.	0.00 (Kam. Hwy.)	B3	0.23 (Bouganville Dr.)	B3	0.00 (Kam. Hwy.)	B3	0.23 (Bouganville Dr.)	B3								
7401	Kamehameha Hwy.	0.00 (Middle St.)	B3	0.10 (100' East of Kalihi Stream Bridge)	B3	0.00 (Middle St.)	B3	0.10 (100' East of Kalihi Stream Bridge)	B3								
7413	Liliha St.	0.00 (King St.)	B3	0.35 (H-1 Liliha St. O/P)	B3	0.00 (King St.)	B3	0.35 (H-1 Liliha St. O/P)	B3								
7415	Middle St.	0.00 (Kaua St.)	B3	0.51 (Kam. Hwy.)	B3	0.00 (Kaua St.)	B3	0.51 (Kam. Hwy.)	B3								
7501	Old Weialae Rd.	0.00 (Kapiolani Blvd.)	B4	0.41 (King St.)	B4									0.00 (Kapiolani Blvd.)	B4	0.41 (King St.)	B4



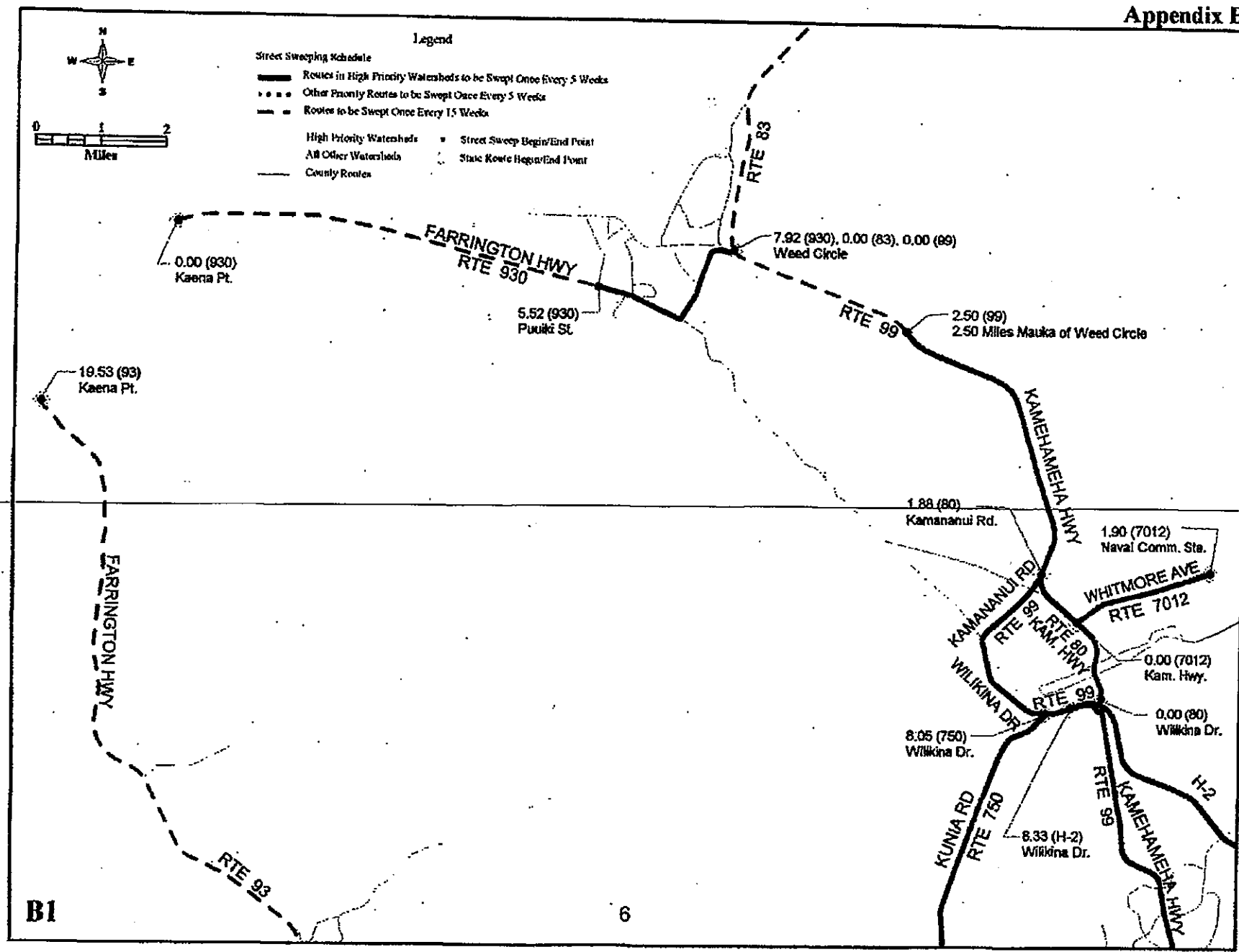
Appendix B
HDOT Highways Division
Oahu District MS4
Sweeping/Brooming of State Routes



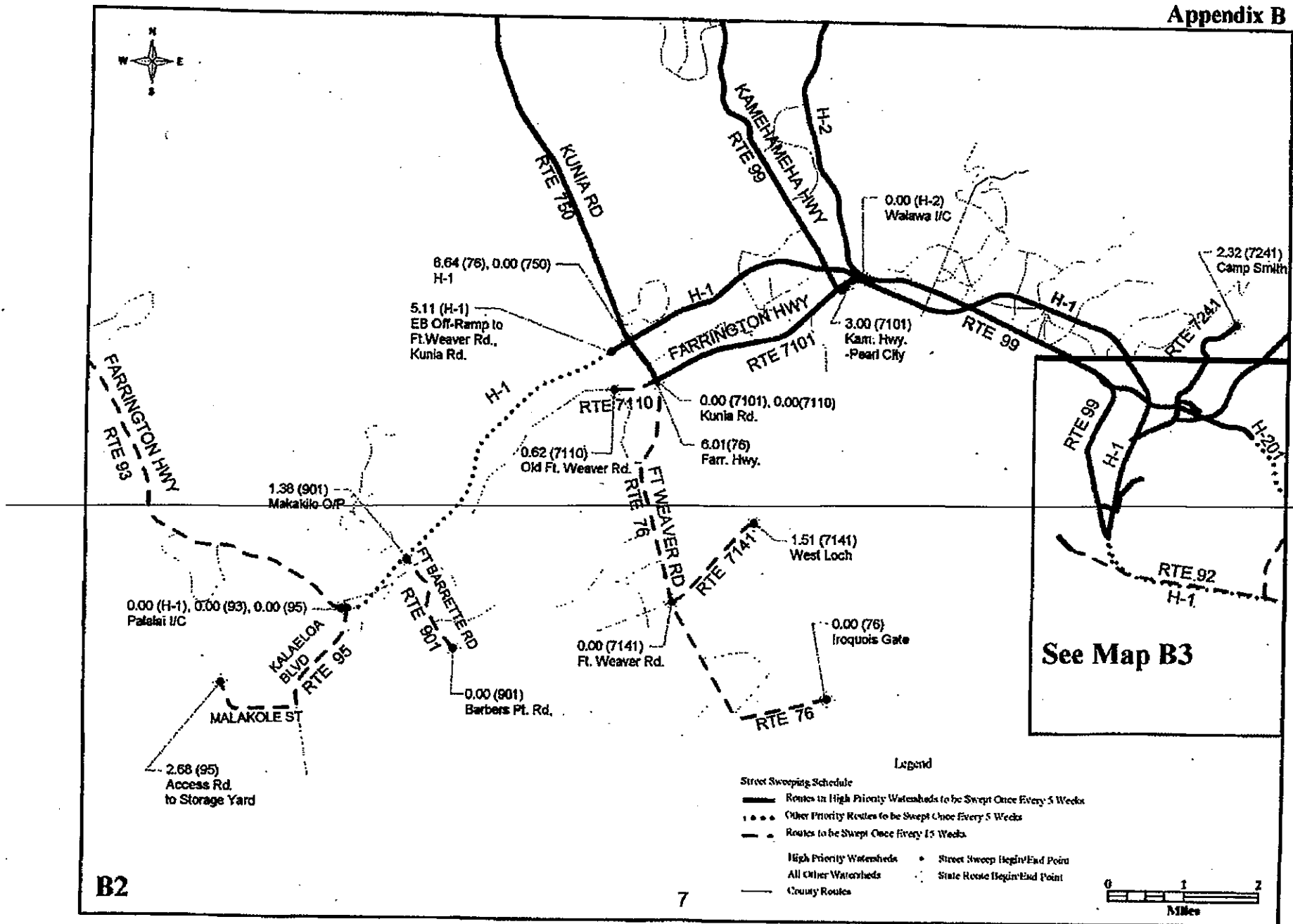
- Legend**
- Street Sweeping Schedule on State Routes**
- Routes in High Priority Watersheds to be Swept Once Every 5 Weeks
 - Other Priority Routes to be Swept Once Every 5 Weeks
 - - - Routes to be Swept Once Every 15 Weeks
 - High Priority Watersheds
 - All Other Watersheds
 - County Routes

Index Map

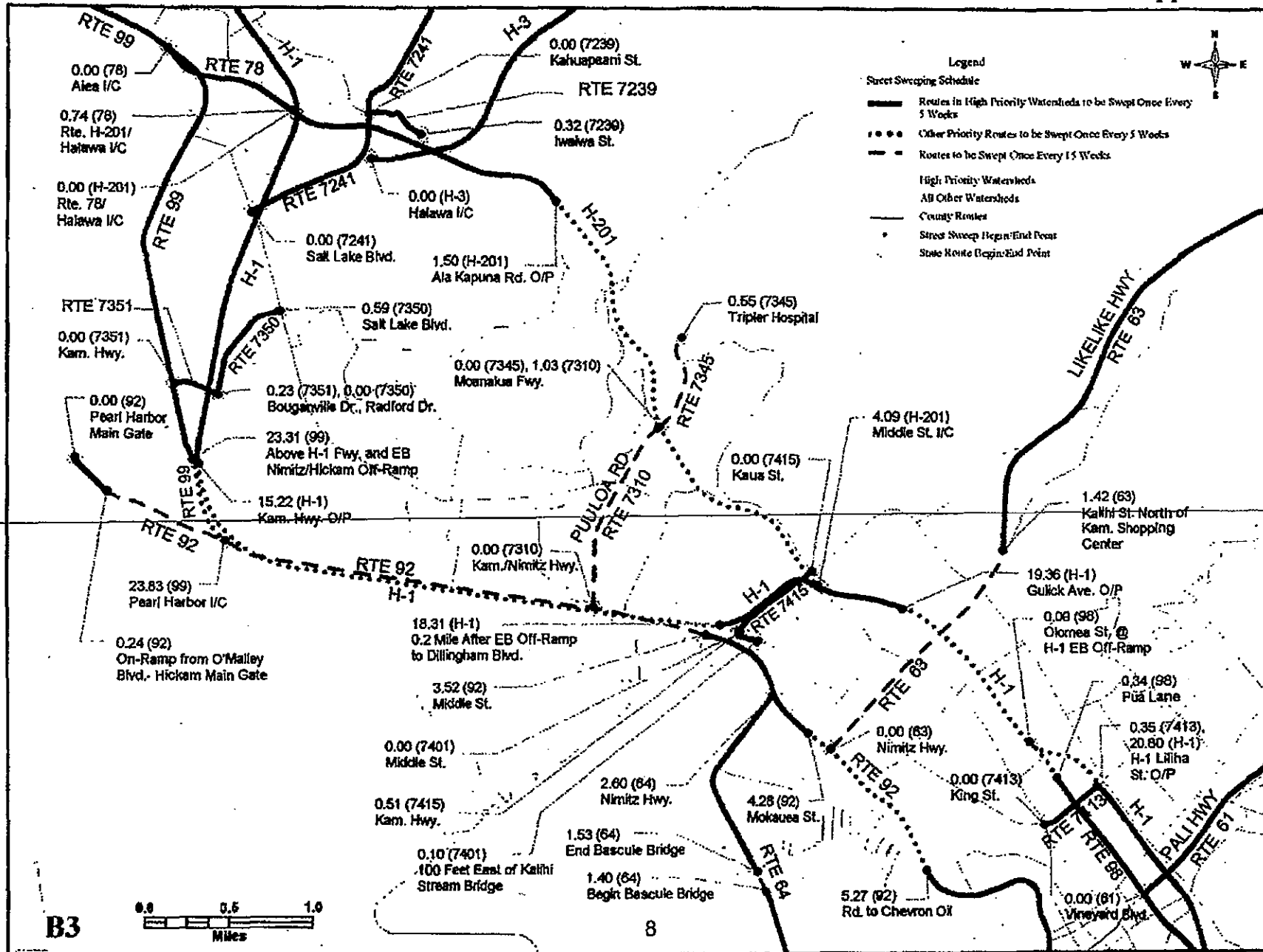
Appendix B



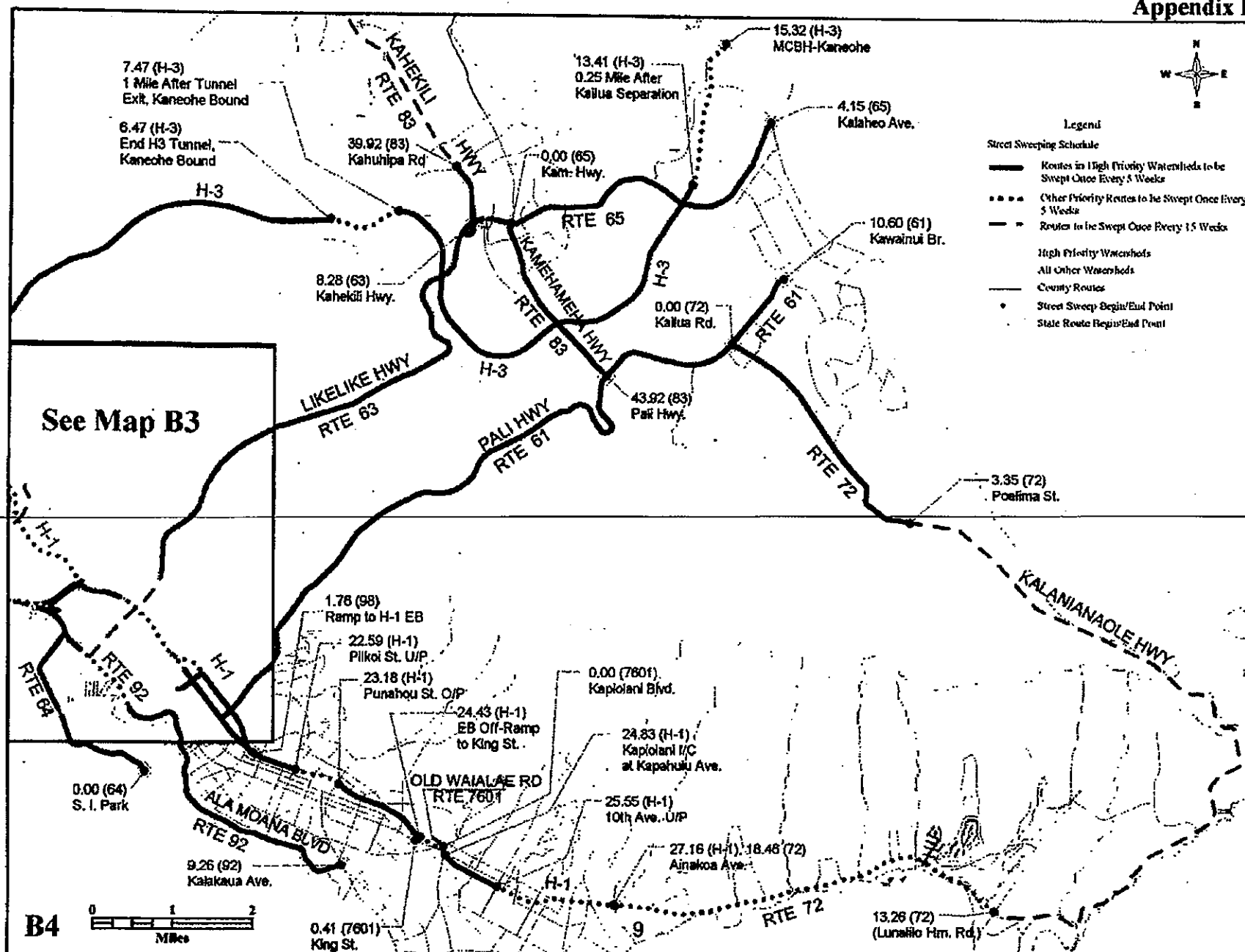
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Appendix B



Appendix B



APPENDIX C

DRAINAGE SYSTEM INSPECTION & CLEANING

1. This requirement becomes effective upon commencement of service contract, or 60 days post-entry, whichever comes first.
2. For drainage system structures (including, but not limited to, gutters, swales, open channels/ditches, culverts, drain inlets, catch basins, manholes, outfalls, and other accessible discharge points) located in High Priority Watersheds and within HDOT's rights-of-way:
 - a. Complete inventory of, and inspect for sediment, trash, litter, and other gross solids, within one (1) year of effective date.
 - b. Clean, in accordance with SWMPP DR3-1, within one (1) year of effective date.
 - c. Re-inspect, and clean as appropriate and in accordance with SWMPP DR3-1, at least semiannually thereafter.
3. For drainage system structures (including, but not limited to, gutters, swales, open channels/ditches, culverts, drain inlets, catch basins, manholes, outfalls, and other accessible discharge points) not located in High Priority Watersheds, or located within High Priority Watersheds but outside of HDOT's rights-of-way:
 - a. Complete inventory of, and inspect for sediment, trash, litter, and other gross solids, within two (2) years of effective date.
 - b. Clean, in accordance with SWMPP DR3-1, within two (2) years of effective date.
 - c. Re-inspect, and clean as appropriate and in accordance with SWMPP DR3-1, at least annually thereafter.
4. For the purposes of this Appendix the word "culverts" shall mean "accessible points including culvert manholes, entrances, and outfalls."

APPENDIX D

AREAS FOR INSTALLATION OF TEMPORARY EROSION CONTROL MEASURES IN HIGH PRIORITY WATERSHEDS

	Route	Route No.	Direction of Travel	From Mile Post	To Mile Post	Length (feet)	Height (feet)
1.	Interstate H-2	H-2	Wahiawa Bound	0.48	0.80	1690	30
2.	Interstate H-2	H-2	Wahiawa Bound	0.99	1.20	1109	30
3.	Interstate H-2	H-2	Honolulu Bound	1.02	1.21	1003	15
4.	Interstate H-2	H-2	Waianae Exit	0.51	1.71	1056	35
5.	Kamehameha Hwy.	99	Wahiawa Bound	11.28	11.50	1162	50
6.	Kamehameha Hwy.	99	Honolulu Bound	11.95	12.16	1109	50
7.	Kunia Rd.	750	Waipahu Bound	7.02	7.20	950	5 - 25
8.	Kunia Rd.	750	Waipahu Bound	6.54	6.79	1320	2 - 15
9.	Kunia Rd.	750	Wahiawa Bound	6.54	6.79	1320	2 - 15
10.	Kunia Rd.	750	Wahiawa Bound	6.96	7.14	950	5 - 25

APPENDIX E

COMPLIANCE-FOCUSED ENVIRONMENTAL MANAGEMENT SYSTEMS ("EMSs")

1. Purpose. The purpose of this supplemental environmental project ("SEP") is to develop and implement EMSs that conform to the standards identified below for the operations and facilities of the Airports, Harbors, and Highways Divisions of the HDOT including, at a minimum, those facilities specifically identified in Attachment 1.

2. Initial Auditor(s). No later than 60 days after entry of the Consent Decree to which this Appendix is attached ("Consent Decree"), HDOT shall provide to EPA and to DOH ("the Parties") in writing:

(a) the name, affiliation, and address of the Initial Auditor(s) selected by HDOT to conduct an Initial EMS Review and Evaluation;

(b) evidence that each Initial Auditor(s) satisfies the qualification requirements and proficiency criteria of ISO 14012 "Guidelines for environmental auditing - Qualification criteria for environmental auditors" (First Edition, 1996-10-01) and that the team conducting the Initial EMS Review and Evaluation, in composite, has a working knowledge of HDOT's operations and the facilities identified in Attachment 1, or similar operations, and of the federal and state environmental requirements which apply to HDOT's operations and these facilities;

(c) evidence that each Initial Auditor(s) has the necessary expertise to develop and implement the Compliance, Best Management Practices and Pollution Prevention ("P2") Checklists required below; and

(d) evidence that each Initial Auditor(s) has the necessary training experience to conduct the training sessions required below.

3. If EPA (after consultation with DOH) determines that the proposed Initial Auditor(s) does not meet the qualifications set forth in the previous Paragraph or that past or existing relationships with the Initial Auditor(s) could affect the Initial Auditor(s)' ability to exercise the independent judgment and discipline required to conduct the review, EPA may disapprove such Initial Auditor(s) and HDOT shall propose another Initial Auditor(s) for approval by EPA (after consultation with DOH) within 30 days of HDOT's receipt of EPA's determination. If, at any time, HDOT wishes to contract with a new Initial Auditor(s), HDOT shall notify the United States and DOH in writing and provide an explanation for the change and shall propose another Initial Auditor(s) to EPA for approval. Any subsequent Initial Auditor(s) must satisfy the qualification requirements of the preceding Paragraph.

4. HDOT shall not, in any way, through its own actions or through the actions of others, interfere with the ability of the Initial Auditor(s) to carry out his or her review of the elements and terms described in this Appendix in an independent fashion.

5. Initial EMS Review and Evaluation. Upon approval of the Initial Auditor(s), HDOT shall direct the Initial Auditor(s) to conduct and complete an Initial EMS Review and Evaluation (commonly referred to as a "gap" analysis) for HDOT's operations at the Harbors (including Honolulu Harbor), Airports (including Honolulu Airport), and Highways Divisions, including a representative sampling of the facilities identified in Attachment 1. The Initial EMS Review and Evaluation shall include an evaluation of the current compliance status, management practices, and pollution prevention ("P2") opportunities at the Divisions, as well as an assessment of any existing EMS, environmental practices, compliance, or P2 programs at the facilities. The Initial Auditor(s) shall review and evaluate any current EMS using the elements set forth in Paragraph 15 below, to identify where systems or subsystems have not been adequately developed or implemented.

6. The HDOT staff, especially the Operations staff, shall be actively involved in the Initial EMS Review and Evaluation. A primary purpose of this Initial EMS Review and Evaluation shall be to collect information for development of the Compliance, Best Management Practices, and Pollution Prevention Checklists and the training sessions required in Paragraphs 9 and 11 below.

7. Any violations of federal, state, or local environmental laws, regulations, or permits or of any other enforceable agreement requiring environmental compliance identified during the Initial EMS Review and Evaluation shall be disclosed and corrected in accordance with Paragraphs 15.F.5 and 36.

8. The Initial EMS Review and Evaluation shall be completed no later than 120 days after approval of the Initial Auditor(s). The results of the Initial EMS Review and Evaluation shall be documented in a report prepared by the Initial Auditor(s) and provided to HDOT, including all Deputy Directors and the Director. This report shall be made available to EPA and DOH upon request.

9. The Compliance, Best Management Practices and Pollution Prevention Checklists ("the Checklists"). No later than 120 days after approval of the Initial Auditor(s), the Initial Auditor(s) shall develop and submit to EPA for review and approval pursuant to Part III of the Consent Decree (Approval Process):

(a) Compliance Checklist(s) of federal, state, local requirements, as described in Paragraph 15.D.2. The Compliance Checklist(s) shall also include the legal citation for any legal requirement, a calendaring system to identify when compliance obligations are due and forms to assist in the facility evaluations.

(b) Best Management Practices Checklist(s) which shall provide a schedule of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge, release, or emission of pollutants; and

(c) Pollution Prevention ("P2") Checklist(s) which shall provide opportunities for preventing, reducing, recycling, reusing, and minimizing waste and emissions, including procedures to encourage material substitutions.

10. Each of the above Checklists shall require ongoing updates and supplementation and shall be tailored to the different operations of HDOT's Harbors, Airports, and Highways Divisions. The Checklists are compliance assistance tools developed by HDOT for use by HDOT. The Checklists are not intended to create rights, substantive or procedural, enforceable by any party in litigation with any regulatory agencies, including, but not limited to, DOH or EPA. EPA and DOH do not vouch for the completeness of the Checklists. The Checklists do not operate in lieu of complying with any legal requirements.

11. Training Course. No later than 120 days after approval of the Initial Auditor(s), the Initial Auditor(s) shall develop and submit to EPA for review and approval pursuant to Part III of the Consent Decree (Approval Process) a detailed training course outline and schedule with all materials for the first two training sessions for each of HDOT's Divisions. The training course and materials shall address, at a minimum, the following:

(a) The training course shall be a multi-session course designed to allow HDOT personnel involved in the course to participate in a session and then return to their respective facilities to apply what has been learned in order to implement the EMSs as defined herein;

(b) The implementation of the Checklists at each facility shall be an integral part of the training and implementation of the EMS; and

(c) The training shall focus, in part, on *measuring environmental results*. As an integral part of the training sessions, HDOT shall develop baseline information for the different environmental aspects of operations, including water usage, wastewater (including stormwater runoff), chemical usage, and energy usage for its facilities. A baseline shall be developed for environmental compliance by implementing the compliance checklist at each facility at the beginning of the training. Goals shall be established for environmental improvement. The difference between the baseline and the information developed during the internal evaluation provides an indicator of the environmental improvement resulting from the EMS.

(d) One follow up training workshop may be conducted as part of the EMS SEP after the EMS Manual has been submitted in accordance with Paragraph 16 below.

12. No later than 30 days after approval of the detailed training course outline and the materials for the first two training sessions, the Initial Auditor(s) shall start training sessions for each of the Divisions. The training courses shall be completed no later than 180 days from the date of the initial training session.

13. Action Plan for EMS Development. No later than 120 days after approval of the Initial Auditor(s), the Initial Auditor(s) shall develop and submit to EPA for review and approval pursuant to Part III of the Consent Decree (Approval Process), an Action Plan describing in a comprehensive manner how the Initial Auditor(s) shall work with the Divisions and facilities to facilitate their development of EMSs for the operations at each of the Divisions and the facilities identified in Attachment 1. The comprehensive EMSs shall, at a minimum, address the 12 key elements set forth in Paragraph 15 below. The Action Plan shall also, at a minimum, include the development of an EMS Manual for each Division that complies with Paragraphs 9, 10, 11, 13, 14, and 35 of this Appendix. The Action Plan shall describe the process by which the Checklists and training course will be integrated to develop and implement the EMSs. As part of the HDOT's facilities' EMS, HDOT shall develop and implement procedures for oversight of the facilities of tenants, contractors, and other users of the ports, airports, and highways subject to the jurisdiction of HDOT. The Action Plan shall include a schedule for implementing the Action Plan and final development of the EMS Manual(s), as required by Paragraph 16, and the Evaluation Report, as required by Paragraph 17.

14. Action Plan's Emphasis on Harbors Division. The Action Plan shall require that the Compliance and Best Management Practices Checklists be implemented at the Harbors Division as a priority. As a mandatory condition for certifying that the SEP has been fully implemented in accordance with Paragraph 21 of the Consent Decree (SEP Completion Report), the Harbors Division shall:

- (a) apply the Compliance and Best Management Practices Checklists to the Honolulu Harbor, including tenants and other users;
- (b) certify that any compliance violations at the Harbors Division's facilities identified in Attachment 1 that have been discovered by the HDOT, Initial Auditor, or the Final Auditor during the initial review, development, implementation, and final audit of the EMS(s) shall have been corrected or are the subject of a compliance schedule as required by Paragraphs 15.F.5 and 36; and
- (c) as part of the HDOT's facilities' EMS, develop and implement procedures for oversight of the facilities of tenants and other users of the ports subject to the jurisdiction of HDOT.

15. The Elements of the EMS. Following the completion of the training course, HDOT shall complete the EMS Manuals. The EMS Manuals shall be organized to clearly address the following issues:

A. Environmental Policy

1. This policy, upon which the EMS is based, must clearly communicate management commitment to achieving compliance with applicable federal, state, and local environmental statutes, regulations, enforceable agreements, and permits (hereafter, "environmental requirements"), minimizing the risks to the environment from unplanned contaminant releases, and continual improvement in environmental performance. Further, the policy should address management's commitment to coordinate activities of HDOT to ensure that there is effective oversight to address the potential and actual environmental impacts resulting from the tenants, contractors, and other users of the ports, highways, and airports subject to the jurisdiction of HDOT. The policy should also state management's intent to seek adequate personnel and other resources for the EMS so that there is dedicated personnel identified to ensure the ongoing implementation of the EMS and that environmental responsibilities are not viewed as collateral duties to the staffs numerous other responsibilities. As evidence of management commitment, the Division Directors of the Harbors, Airports, and Highway Divisions shall personally review and certify as to the status of the EMSs for each of their respective facilities and the Division on a biannual basis. The certification shall be submitted to EPA. The Director of HDOT shall review the status of the EMS annually.

B. Organization, Personnel, and Oversight of EMS

1. Describes, organizationally, how the EMS is implemented and maintained.
2. Includes organization charts that identify units, line management, and other individuals having environmental performance, risk reduction, and regulatory compliance responsibilities.
3. Identifies and defines specific duties, roles, responsibilities, and authorities of key environmental program personnel in implementing and sustaining the EMS (e.g., could include position descriptions and performance standards for all environmental department personnel, and excerpts from others having specific environmental program and regulatory compliance responsibilities).
4. Includes ongoing means of communicating environmental issues and information to all organization personnel, on-site service providers, tenants, and contractors, and for receiving and addressing their concerns.

C. Accountability and Responsibility

1. Specifies accountability and environmental responsibilities of organization's managers, on-site service providers, tenants, and contractors for environmental protection practices, assuring compliance, required reporting to regulatory agencies, and corrective actions implemented in their area(s) of responsibility.
2. Describes incentive programs for managers and employees to perform in accordance with compliance policies, standards, and procedures.
3. Describes potential consequences for departure from specified operating procedures, including HDOT liability for civil/administrative penalties imposed as a result of noncompliance.

D. Environmental Requirements

1. Describes process for identifying, interpreting, and effectively communicating environmental requirements to affected organization personnel, on-site service providers, tenants, and contractors, and then ensuring that facility activities conform to those requirements (i.e., ongoing compliance monitoring). Specifies procedures for prospectively identifying and obtaining information about changes and proposed changes in environmental requirements, and incorporating those changes into the EMS.
2. Includes a compliance checklist of federal, state, local requirements and best industry practices. These requirements shall incorporate, but are not limited to, the terms in permits, orders, and enforceable agreements. The requirements addressed by the Compliance Checklist are based on the Clean Water Act, 33 U.S.C. §§ 1311–1346 (including compliance with the Storm Water and SPCC requirements of the Act); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921–6939e; and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001–11023. This Compliance Checklist shall be updated periodically and used for routine compliance audits, as appropriate. All compliance violations identified by the Compliance Checklist, or otherwise in conjunction with the EMS, shall be corrected in accordance with the terms of Paragraphs 15.F.5 and 36.
3. Establishes and describes processes to ensure communication with regulatory agencies regarding environmental requirements and regulatory compliance.

E. Assessment, Prevention, and Control

1. Identifies an ongoing process for assessing operations, for the purposes of preventing and controlling or minimizing reasonably foreseeable releases or discharges, ensuring environmental protection, and maintaining compliance with

statutory and regulatory requirements. This section shall describe monitoring and measurements, as appropriate, to ensure sustained compliance. It shall also include identifying operations and waste streams where equipment malfunctions and deterioration, operator errors or deliberate malfeasance, and discharges or emissions may be causing, or may lead to: (a) releases of hazardous waste or other pollutants to the environment, (b) a threat to human health or the environment, or c) violations of environmental requirements.

2. Describes process for identifying operations and activities where documented standard operating practices ("SOPs") are needed to prevent potential violations or unplanned pollutant releases, and defines a uniform process for developing, approving, and implementing the SOPs.
3. Describes a system for conducting and documenting routine, objective, self-inspections by department supervisors and trained staff, especially at locations identified by the process described in Paragraph 15.B.1, to check for malfunctions, deterioration, worker adherence to SOPs, and unauthorized releases.
4. Describes process for ensuring input of environmental requirements (or concerns) in planning, design, and operation of ongoing, new, and/or changing buildings, processes, equipment, and maintenance activities.

F. Environmental Incident and Noncompliance Investigations

1. Describes standard procedures and requirements for internal and external reporting of potential violations and release or discharge incidents or other non-compliance.
2. Establishes procedures for investigation and prompt and appropriate correction of potential violations. The investigation process includes root-cause analysis of identified problems to aid in developing the corrective actions.
3. Describes a system for development, tracking, and effectiveness verification of corrective and preventative actions.
4. Each of these procedures shall specify self-testing of such procedures, where practicable.
5. Provide prompt notice of all violations to the regulatory agency and correct all compliance violations identified by the EMS for facilities identified in Attachment 1 within 21 days, unless a legal requirement requires more prompt correction. If it is determined that the violation cannot be corrected within 21 days, a compliance

schedule should be submitted to the HDOT EMS manager and to the applicable regulatory agency.

G. Environmental Training, Awareness, and Competence

1. Identifies other specific education and training required for organization personnel, as well as process for documenting training provided.
2. Describes program to ensure that organization employees are aware of its environmental policies and procedures, environmental requirements, and their roles and responsibilities within the environmental management system.
3. Describes program for ensuring that personnel responsible for meeting and maintaining compliance with environmental requirements are competent on the basis of appropriate education, training, and/or experience. In particular, training shall be conducted to address any compliance violations identified by the EMS.
4. Identifies training on how to recognize operations and waste streams where equipment malfunctions and deterioration, operator errors or deliberate malfeasance, and discharges or emissions may be causing, or may lead to: (a) releases of hazardous waste or other pollutants to the environment, (b) a threat to human health or the environment, or c) violations of environmental requirements.

H. Environmental Planning and Organizational Decision-Making

1. Describes how environmental planning will be integrated into organizational decision-making, including plans and decisions on capital improvements, product and process design, training programs, and maintenance activities.
2. Requires establishing written targets, objectives, and action plans by at least each operating organizational subunit with environmental responsibilities, as appropriate, including those for contractor operations conducted at the facility, and how specified actions will be tracked and progress reported. Targets and objectives must include actions which reduce the risk of noncompliance with environmental requirements and minimizing the potential for unplanned releases.

I. Maintenance of Records and Documentation

1. Identifies the types of records developed in support of the EMS (including audits and reviews), who maintains them and where, and protocols for responding to inquiries and requests for release of information.

2. Specifies the data management systems for any internal waste tracking, environmental data, and hazardous waste determinations.
3. Specifies document control procedures.

J. Pollution Prevention/Best Management Practices Program

1. Describes an internal program for preventing, reducing, recycling, reusing, and minimizing waste and emissions, including procedures to encourage material substitutions. HDOT shall evaluate P2 opportunities which shall include an identification of the opportunities, an evaluation of whether those opportunities are technically feasible, a calculation of the cost and a quantitative assessment of the pollution reduction. The Pollution Prevention and Best Management Practices Checklists will serve as a basis for this program.
2. To the extent that the training and development of the EMS Manual for a Division has been completed for the identified facilities and available funding from the SEP remains, the Division can select additional SEP projects arising out of the training, so long as such projects are consistent with the terms and conditions of the EPA Supplemental Environmental Projects Policy (May 1, 1998) and approved by EPA. If there are remaining funds available for a Division, another Division can apply to the HDOT EMS manager for use of the funds to conduct one of the approved SEP projects.

K. Continuing Program Evaluation and Improvement

1. Describes program for periodic (at least annually) evaluation of the EMS, including incorporating the results of the assessment into program improvements, revisions to the manual, and communicating findings and action plans to affected employees, on-site service providers, tenants, and contractors.
2. Describes a program for periodic audits (at least annually) of facility compliance with environmental requirements. Audit results are reported to upper management and potential violations are addressed through the process described in Paragraphs 15.F.5 and 36. In addition, an audit by an independent auditor will be conducted every four years.

L. Public Involvement/Community Outreach

1. Describes a program for ongoing community education and involvement in the environmental aspects of the organization's operations and general environmental awareness.

16. Submission of the EMS Manual. No later than 60 days after completion of the training course, HDOT shall submit to EPA complete EMS Manuals addressing the EMS provisions in Appendix E herein that relate to the facilities identified in Attachment 1 for review and approval in accordance with Part III (Approval Process) of the Consent Decree. A copy of the complete EMS Manuals shall be provided to DOH. Upon approval of the EMS Manual(s), HDOT shall immediately commence implementation of the EMS(s) in accordance with the schedule that shall be provided in the EMS Manual(s).

17. Evaluation Report. No later than 90 days after the EMS Manuals are approved, HDOT shall submit to EPA and to DOH an Evaluation Report describing the activities associated with the development of the EMS at the facilities identified in Attachment 1. The Evaluation Report shall include the following:

- (a) the implementation status of each of the twelve EMS elements identified in Paragraph 15;
- (b) baseline information for the different environmental aspects including water usage, wastewater (including stormwater runoff), hazardous waste, and energy usage;
- (c) a completed Compliance Checklist for each of the identified environmental requirements;
- (d) a corrective action schedule for any identified non-compliance; and
- (e) an identification of P2 opportunities, including an evaluation of whether those opportunities are technically feasible, a calculation of their cost and a quantitative assessment of the projected pollution reduction.

18. Final Auditor. HDOT shall provide for a third party (Final Auditor) to perform a Final Audit of the EMSs at each of HDOT's Divisions and facilities identified in Attachment 1. HDOT's contract with the Final Auditor shall require the Final Auditor to review and to evaluate the implementation of the systems, policies, and procedures described in the EMS Manuals, using the criteria set forth in Paragraphs 24 and 25 of this Appendix, as criteria for the evaluation. No later than 60 days after the EMS Manuals are approved HDOT shall provide to the EPA and DOH in writing:

- (a) the name, affiliation, qualifications and address of an independent auditor who was not involved in the Initial EMS Review and Evaluation ("the Final Auditor") selected by HDOT to perform an audit of HDOT's operations at each of its Divisions and the facilities identified in Attachment 1;

(b) evidence that the selected Final Auditor satisfies the independence and proficiency criteria contained in the ISO 14012 "Guidelines for environmental auditing - Qualification criteria for environmental auditors" (First edition, 1996-10-01).

(c) evidence that the Final Auditor has the necessary expertise to evaluate all the terms and conditions described in Paragraphs 9, 10, 11, 13, 14, 15, and 35, including expertise and competence in the regulatory programs under federal, state, and local environmental laws; and

(d) a schedule, including milestones, for conducting the review.

19. The Final Auditor must be capable of exercising the same independent judgment and discipline that a certified public accounting firm would be expected to exercise in auditing a publicly held corporation.

20. If EPA (after consultation with DOH) determines that the proposed Final Auditor does not meet the qualifications set forth in the previous Paragraph or that past or existing relationships with the Final Auditor could affect the Auditor's ability to exercise the independent judgment and discipline required to conduct the review, EPA may disapprove such Auditor and HDOT shall propose another Final Auditor for approval by EPA within 30 days of HDOT's receipt of EPA's determination. If, at any time, HDOT wishes to contract with a new Final Auditor because the approved Auditor is unable to fulfill the remaining tasks under the Final Audit of the EMSs, or for any other reason, HDOT shall notify EPA and DOH in writing and provide an explanation for the change and shall propose another Final Auditor to EPA for approval. Any subsequent Final Auditor must satisfy the qualification requirements outlined in Paragraphs 18 and 19 above.

21. HDOT shall not, in any way, through its own actions or through the actions of others, interfere with the ability of the Final Auditor to carry out his or her review of the elements and terms described in this Appendix in an independent fashion.

22. HDOT shall identify any and all site-specific training requirements for the Final Auditor and shall ensure that the requirements are met prior to conducting the audit.

23. The EMS Final Audit Plan. HDOT shall require the Final Auditor to prepare an EMS Final Audit Plan, for purposes of implementing the EMS Final Audit as described in Paragraphs 24 and 25 below, with an implementation schedule. The draft EMS Final Audit Plan shall be submitted no later than 45 days after the EPA's approval of the Final Auditor to EPA for review and approval pursuant to Part III of the Consent Decree (Approval Process). A copy of the draft EMS Final Audit Plan shall also be submitted to DOH.

24. HDOT shall require the Final Auditor to conduct an EMS Final Audit to evaluate the adequacy of EMS implementation, from top management down, throughout each

major organizational unit at the facilities, and to identify where further improvements should be made to the EMS. The Final Auditor shall include a comprehensive audit, with personal visit(s) by the Final Auditor, to determine conformance with the items identified in Paragraph 25 for all facilities identified in Attachment 1 located on Oahu. For all of the other facilities identified in Attachment 1, the HDOT EMS Manager shall have discretion as to: a) whether there will be personal visit(s) by the Final Auditor; and b) the extent of the evaluation needed to establish conformance with the elements identified in Paragraph 25 herein. For example, audits for these other facilities may be conducted by, at a minimum, reviewing the applicable portion of the EMS manual used by the facility and all records documenting EMS activities, in addition to conducting telephone interviews, as deemed appropriate. Notwithstanding the discretion related to the Final Audit, as described in this paragraph, HDOT shall implement an EMS, as developed in accordance with Appendix E, for all of the facilities identified in Attachment 1. The EMS Final Audit shall be conducted in accordance with ISO 14011 (First edition, 1996-10-01), using ISO 14010 (First edition, 1996-10-01) as supplemental guidance.

25. The Final Auditor shall assess conformance with the elements specified in Paragraphs 9, 10, 11, 13, 14, 15, and 35 and with the EMS Manuals, and shall determine the following for the Divisions and for each of the facilities:

- (a) Whether there is a defined system, subsystem, program, or planned task for the respective EMS element;
- (b) To what extent the system, subsystem, program, or task has been implemented and is being maintained;
- (c) Adequacy of each Facility's internal self-assessment procedures for programs and tasks composing the EMS;
- (d) Whether HDOT is effectively communicating environmental requirements to affected parts of the organization, contractors, tenants, users, and on-site service providers;
- (e) Whether further improvements should be made to the EMS;
- (f) Whether there are observed deviations from HDOT's written requirements or procedures;
- (g) Whether continuous improvement is occurring;
- (h) Any violations of federal, state, or local environmental laws, regulations, or permits, or of any other enforceable agreement requiring environmental compliance at the facilities. Any identified violation shall be disclosed and corrected in accordance with Paragraphs 15.F.5 and 36;

- (i) Whether the Checklists have been effectively implemented at the facilities;
- (j) Whether there is sufficient information to measure environmental results as described in Paragraph 11(c); and
- (k) The extent to which the EMS includes effective procedures for oversight of the facilities of tenants, contractors, and other users of the ports, airports, and highways subject to the jurisdiction of HDOT.

26. The EMS Final Audit shall not be initiated until at least 30 days after HDOT submits the Evaluation Report as described in Paragraph 17 above. The EMS Final Audit shall be completed no later than 90 days after HDOT submits the Evaluation Report.

27. Designated representatives from EPA, DOH, and other environmental regulatory agencies may participate in the Final EMS Audit as observers. HDOT shall make timely notification to designated regulatory contacts regarding audit scheduling in order to make arrangements for observers to be present. HDOT personnel may also participate in the on-site audits as an observer(s), but may not interfere with the independent judgement of the Final Auditor.

28. EMS Final Audit Report. HDOT shall direct the Final Auditor to independently prepare an EMS Final Audit Report and concurrently submit the report to HDOT, DOH and EPA within 60 days of completion of the EMS Final Audit. The EMS Final Audit Report shall present the Audit Findings and shall, at a minimum, contain the following information:

- (a) Audit scope, including the period of time covered by the audit;
- (b) The date(s) the on-site portion of the audit was conducted;
- (c) Identification of audit team members;
- (d) Identification of HDOT representatives and regulatory agency personnel observing the audit;
- (e) The distribution for the EMS Final Audit Report;
- (f) A summary of the audit process, including any obstacles encountered;
- (g) Detailed Audit Findings, including the basis for each Finding and each Area of Concern identified;

(h) Identification of any Audit Findings corrected or Areas of Concern addressed during the audit, and a description of the corrective measures and when they were implemented;

(i) Certification by the Final Auditor that the EMS Final Audit was conducted in accordance with the provisions of this Decree;

(j) An identification of any violations of federal, state, or local environmental laws, regulations, or permits, or of any other enforceable agreement requiring environmental compliance at the facilities and any root cause analysis describing the reason for the violations;

(k) The extent to which the Checklists have been effectively implemented at the facilities;

(l) The extent to which the facilities are able to measure environmental results as described in Paragraph 11(c) above; and

(m) How the EMS SEP has applied to contractors, tenants, and other users in accordance with Paragraph 35.

29. If the Final Auditor believes that additional time is needed to analyze available information or to gather additional information, HDOT may request that EPA grant the Final Auditor such additional time as needed to prepare and submit the EMS Final Audit Report. EPA's decision whether to grant additional time shall be final and unreviewable.

30. Corrective Action Plan. Upon receiving the EMS Final Audit Report, HDOT shall conduct a root cause analysis of the identified Audit Findings, as appropriate, and shall investigate all Areas of Concern. No later than 60 days after receiving the EMS Final Audit Report, HDOT shall submit to EPA for review and approval pursuant to Part III of the Consent Decree (Approval Process), a Corrective Action Plan for expeditiously bringing the facilities into full conformance with the EMS provisions in Paragraphs 9, 10, 11, 13, 14, 15, and 35, the EMS Manual(s), and fully addressing all Areas of Concern from the EMS Final Audit Report. A copy of the Corrective Action Plan shall be submitted to DOH. The Corrective Action Plan shall include the result of any root cause analysis, specific deliverables, responsibility assignments, and an implementation schedule.

31. Upon EPA approval of the Corrective Action Plan, in whole or in part, HDOT shall begin implementation of the Corrective Action Plan immediately in accordance with the implementation schedule set forth therein. HDOT shall submit status reports regarding implementation to EPA and to DOH on a quarterly basis, beginning no later than 30 days from EPA's approval of the Corrective Action Plan, in whole or in part, until all approved portions of the Corrective Action Plan have been completed.

32. SEP Completion Report and Corrective Action Plan Completion. Within 30 days after all items in the Corrective Action Plan have been completed, HDOT shall submit to EPA and to DOH:

(a) a SEP Completion Report in accordance with Paragraphs 21 through 23 of the Consent Decree. The SEP Completion Report is subject to Part X (Dispute Resolution) of the Consent Decree. Any disputes concerning the SEP Completion Report are the only disputes arising out of this Appendix that are related to the satisfactory performance of the EMS SEP; and

(b) a written Correction Action Plan Completion Certification to EPA signed by the Director of HDOT.

33. Funding of EMS SEP. HDOT's total expenditure for the EMS SEP shall not be less than \$1,062,500. No part of this expenditure shall include federal funds, including low interest federal loans, federal contracts, or federal grants. Each of the Divisions shall use its share of these dollars to implement an EMS at each of the identified facilities within its Division. SEP funds not spent within four years from the effective date of this Consent Decree shall revert to the U.S. Treasury, unless an extension is agreed to by HDOT and the United States.

34. Eligible SEP Expenses. The Initial Auditor(s)' costs associated with the Initial EMS Review and Evaluation, preparation of the training materials, time for instruction, follow up with facilities on EMS related activities, including, but not limited to, implementing the Checklists and one follow up training session, shall be eligible SEP expenses. Technical support for conducting the projects identified through Paragraph 15.J.2 above may be eligible SEP expenses. Finally, costs associated with the Final Auditor for preparing the EMS Final Audit Plan, conducting the EMS Final Audit, and preparing the EMS Final Audit Report and for technical assistance associated with implementing the Final Auditor's recommendations, not associated with correcting a compliance violation, shall be eligible SEP expenses. No costs associated with HDOT employees participating in training, implementing the EMS or other expenses associated with the EMS (including any costs associated with corrective actions needed for compliance actions identified under the EMS) shall be considered eligible SEP expenses. Also, any costs associated with the injunctive relief required by this Consent Decree shall not be eligible SEP expenses.

35. The Relationship of the EMS SEP to the Contractors, Tenants, and Users. The Checklists shall be used by HDOT personnel, in part, to evaluate the environmental performance of its contractors, tenants, and users. Contractors, tenants, and users of the Harbors, Airports, and Highways Divisions may be invited to attend the training sessions, but they will not be allowed to use SEP funds to discuss their EMS outside the training sessions with the Initial Auditor(s). HDOT shall require contractors to implement the EMS for all activities conducted on HDOT property, as part of future contractual requirements.

36. Violations Discovered in Connection with the Implementation of the EMSs. All violations of federal, state, or local environmental requirements at HDOT facilities identified in Attachment 1 discovered by HDOT, the Initial Auditor, or the Final Auditor during the initial review, development, implementation, and final audit of the EMS(s) shall:

- (a) be disclosed to EPA and corrected in accordance with Paragraph 15.F.5 of this Appendix; and
- (b) meet the "voluntary discovery" condition of the "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" ("the Audit Policy"), 65 Fed. Reg. 19618 (April 11, 2000).

37. Retention of Rights. Notwithstanding the activities associated with this SEP, the United States and DOH retain its enforcement rights to address any violations.

38. Confidential Business Information ("CBI"). HDOT may, if appropriate, assert that portions of the EMS Manual or reports or other submissions required by this Appendix contain CBI, pursuant to 40 C.F.R. Part 2, Subpart B. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies the documents or information when submitted to EPA, or if EPA has notified HDOT that the documents or information is not confidential under the standards of 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to HDOT.

ATTACHMENT 1
DOT FACILITY LIST

I. Airports Division.

- a. Hawaii District, Hilo International Airport, DOT Maintenance Baseyard
- b. Hawaii District, Kona International Airport at Keahole, DOT Maintenance Baseyard
- c. Hawaii District, Waimea-Kohala Airport, DOT Maintenance Baseyard
- d. Kauai District, Lihue Airport, DOT Maintenance Baseyard
- e. Oahu District, Honolulu International Airport, DOT Maintenance Baseyard
- f. Oahu District, Dillingham Airfield, DOT Maintenance Baseyard
- g. Oahu District, Kalaeloa Airport, DOT Maintenance Baseyard
- h. Maui District, Kahului Airport, DOT Maintenance Baseyard
- i. Maui District, Kapalua Airport, DOT Maintenance Baseyard
- j. Maui District, Lanai Airport, DOT Maintenance Baseyard
- k. Maui District, Molokai Airport, DOT Maintenance Baseyard

II. Highways Division

- a. Hawaii District, Hilo Baseyard
- b. Hawaii District, Honokaa Baseyard
- c. Hawaii District, Waimea Baseyard
- d. Hawaii District, North Kona Baseyard
- e. Hawaii District, South Kona Baseyard
- f. Hawaii District, Kau Baseyard
- g. Kauai District, Lihue Baseyard
- h. Kauai District, Waimea Baseyard
- i. Oahu District, Kakoi Street Baseyard
- j. Oahu District, Keehi Baseyard
- k. Oahu District, Kaneohe Baseyard
- l. Oahu District, Haaula Baseyard
- m. Oahu District, Wahiawa Baseyard
- n. Oahu District, Waiane Baseyard
- o. Oahu District, Pearl City Baseyard
- p. Oahu District, H-3 Tunnel Maintenance Shop
- q. Maui District, Kahului Baseyard
- r. Maui District, Keanae Baseyard
- s. Maui District, Lanai Baseyard
- t. Maui District, Molokai Baseyard

III. Harbors Division

- a. Hawaii District, Hilo Harbor DOT Maintenance Facility
- b. Hawaii District, Kawaihae Harbor DOT Maintenance Shop

- c. Kauai District, Nawiliwili Harbor DOT Maintenance Facility
- d. Kauai District, Port Allen Harbor DOT Maintenance Shop
- e. Oahu District, Honolulu Harbor DOT Maintenance Facility
- f. Oahu District, Kalaeloa Barbers Point Harbor
- g. Maui District, Kahului Harbor DOT Maintenance Facility

APPENDIX F

COMPLIANCE ASSISTANCE WORKSHOPS

1. HDOT shall provide "Erosion and Sediment Control for Highways" Compliance Assistance Workshops for professional contractors and construction contractors at each of the following six (6) locations: Hilo, Hawaii; Kona, Hawaii; Kauai; Maui; Honolulu, Oahu; and Kapolei, Oahu.
2. HDOT shall provide the cost for one DOH representative to attend each workshop, including transportation to and from Oahu and accommodations as required.
3. HDOT shall provide separate courses for professional contractors and construction contractors. In addition, HDOT shall invite inspectors from each County to attend each workshop.
4. HDOT shall publicize the workshops by giving a minimum of thirty (30) days notice to the applicable organizations.
 - a. The notice shall include the date, time, location, and outline of the workshop.
 - b. The applicable organizations include, but are not limited to, the following organizations:
 - i. American Council of Engineering Companies of Hawaii (ACECH), American Society of Civil Engineers (ASCE) Hawaii Section, Hawaii Society of Professional Engineers (ASPE), Hawaii Water Environment Association (HWEA), and Institute of Transportation Engineers (ITE) for professional contractors.

- ii. Building Industry Association of Hawaii (BIA-Hawaii) and General Contractors Association of Hawaii (GCA), and the Contractor's Associations on the islands of Maui, Kauai, and Hawaii for construction contractors.
5. Each course shall take one day (minimum of 6 hours of instruction).
6. Within thirty (30) days from the date of entry of the Consent Decree, HDOT shall submit draft course outlines to EPA and DOH for approval pursuant to Section III of this Consent Decree. The course outlines shall, at a minimum, accomplish the following:
- a. These one day courses shall provide participants with a thorough understanding of the principles of erosion and sediment control and how they uniquely apply to highway projects. The regulatory requirements shall also be discussed. The emphasis of both courses shall be selecting, designing, implementing, and evaluating the effectiveness of Best Management Practices and Erosion and Sediment Control Plans.
- b. The following topics shall be covered in the course:
- Erosion and Sediment Control Process
 - Regulatory Requirements
 - Overview and Development of erosion control plans
 - Stabilization Methods
 - Structural Erosion Control Methods
 - Design Issues and Considerations
 - Inspection and Monitoring Requirements
- c. Upon completion of the course, the attendees should be able to:
- Understand the erosion and sediment control process and the factors which influence erosion and sedimentation.

- Comprehend the regulatory issues which relate to erosion control for highways.
 - Follow the basic procedures for developing erosion control plans.
 - Describe the stabilization methods used in highway applications.
 - Describe the structural erosion control measures used in highway applications.
 - Perform basic design calculations for erosion control measures.
 - Understand inspection and monitoring requirements.
7. Within ninety (90) days from the date of entry of the Consent Decree, HDOT shall commence offering the first workshop. All twelve (12) workshops shall be completed by HDOT no later than fifteen (15) months from the date of entry of the Consent Decree.
8. HDOT shall document attendance at the workshops with sign-in or registration sheets. These sheets, along with copies of the notice described in Paragraph 4 and the list of associated recipients, shall be submitted in HDOT's End-of-Year Reports.

APPENDIX G

LIST OF CCH MANUAL LOCATIONS HIGHWAYS DIVISION

1. Construction & Maintenance Branch
 - a. Construction Section (4 Employees, 1 Manual)
 - b. Environmental Section (2 Employees, 1 Manual)
 - c. Maintenance Section (4 Employees, 1 Manual)
2. Planning Branch
 - a. Advance Planning Section (7 Employees, 1 Manual)
 - b. Highway Planning Survey Section (18 Employees, 2 Manuals)
 - c. System Planning Section (6 Employees, 1 Manual)
3. Materials Testing & Research Branch
 - a. Research & Technology Transfer Section (7 Employees, 1 Manual)
 - b. Geotechnical & Pavement Design Section (9 Employees, 1 Manual)
 - c. Bituminous Materials Section (9 Employees, 1 Manual)
 - d. Structural Material Section (8 Employees, 1 Manual)
4. Design Branch
 - a. Bridge Design Section (14 Employees, 1 Manual)
 - b. Highway Design Section (25 Employees, 2 Manuals)
 - c. Hydraulic Design Section (9 Employees, 3 Manuals)
5. Traffic Branch
 - a. Traffic Design Service Section (7 Employees, 1 Manual)
 - b. Traffic Operation Section (10 Employees, 1 Manual)
6. Oahu District
 - a. Field Offices
 - i. Halawa - Upper (14 Employees, 1 Manual)
 - ii. Halawa - Lower (13 Employees, 1 Manual)
 - iii. Kilihau (14 Employees, 1 Manual)
 - iv. Kaneohe (12 Employees, 1 Manual)
 - v. Pearl City (10 Employees, 1 Manual)
 - vi. Salt Lake (14 Employees, 1 Manual)
 - b. Maintenance Section
 - i. NPDES (4 Employees, 1 Manual)

- ii. Facility Engineering (5 Employees, 1 Manual)
 - iii. Field Engineering (7 Employees, 1 Manual)
 - iv. Equipment Service & Repair Unit (2 Employees, 1 Manual)
 - v. Highway Electrical Unit (13 Employees, 1 Manual)
 - vi. Highway Maintenance Unit (108 Employees, 7 Manuals)
 - c. Tunnel Section (40 Employees, 3 Manuals)
7. Hawaii District
- a. Design Section (7 Employees, 1 Manual)
 - b. Construction Section (19 Employees, 1 Manual)
 - c. Maintenance Section (17 Employees, 1 Manual)
8. Maui District
- a. Engineering Section (5 Employees, 1 Manual)
 - b. Construction Section (8 Employees, 1 Manual)
 - c. Survey Unit (4 Employees, 1 Manual)
 - d. Maintenance Section (11 Employees, 1 Manual)
9. Kauai District
- a. Construction/Maintenance Section (20 Employees, 2 Manuals)

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment & Natural Resources Division
ANGELA O'CONNELL
Environmental Enforcement Section
U.S. Department of Justice
301 Howard St., Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6485
Facsimile: (415) 744-6476
E-mail: angela.o'connell@usdoj.gov

EDWARD H. KUBO, JR. 2499
United States Attorney
PJKK Federal Building
300 Ala Moana Boulevard, Room 6-100
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,
DEPARTMENT OF HEALTH, STATE
OF HAWAII,

Plaintiffs,

v.

DEPARTMENT OF TRANSPORTATION,
STATE OF HAWAII

Defendant.

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

OCT 06 2005

at 8 o'clock and 75 min. M
SUE BEITIA, CLERK

CV 05 00636 HG KSC
CIVIL ACTION NO.

CERTIFICATE OF SERVICE

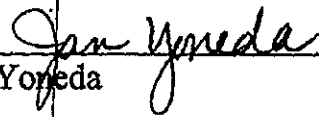
CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the following documents were mailed on October 6, 2005, to be served upon the persons listed on the attached service list in the manner indicated:

Complaint;
Notice of Lodging of Consent Decree; and
Consent Decree (for lodging purposes)

I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 6, 2005, at Honolulu, Hawaii.



Jan Yoneda

SERVICE LIST

Sent via U.S. Postal Service:

Rodney K. Haraga
Director, Department of
Transportation
869 Punchbowl Street
Honolulu, Hawai'i 96813

Jeffery S. Kato
Deputy Attorney General
Land and Transportation Division
Department of the Attorney General
State of Hawai'i
465 South King Street, Room 300
Honolulu, Hawai'i 96813

Allan Chock, Esq.
Deputy Attorney General
Land and Transportation Division
Department of the Attorney General
State of Hawai'i
465 South King Street, Room 300
Honolulu, Hawai'i 96813

Chiyome Leinaala Fukino, M.D.
Director of Health
Hawaii Department of Health
State of Hawai'i
1250 Punchbowl Street
Honolulu, Hawai'i 96813

Laurence Lau
Deputy Director
Hawaii Department of Health
Environmental Health Administration
State of Hawaii
1250 Punchbowl Street
Honolulu, Hawai'i 96813

Kathleen S. Ho, Esq.
Deputy Attorney General
Department of the Attorney General
Health and Human Services Division
465 South King Street, Room 200
Honolulu, Hawai'i 96809

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment & Natural Resources Division
ANGELA O'CONNELL
Environmental Enforcement Section
U.S. Department of Justice
301 Howard St., Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6485
Facsimile: (415) 744-6476
E-mail: angela.o'connell@usdoj.gov

EDWARD H. KUBO, JR.
United States Attorney
PJKK Federal Building
300 Ala Moana Boulevard, Room 6-100
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958

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Defendant.

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at 8 o'clock and 30 min. a.m.
SUE BEITIA, CLERK

CIVIL ACTION NO.

NOTICE OF LODGING

KSC

The United States of America ("United States"), by the authority of the Attorney General and through the undersigned attorney, and on behalf of the Administrator of the United States Environmental Protection Agency, hereby serves notice that the United States is lodging with the Court a Complaint and a Consent Decree that resolves all claims raised in the Complaint.


Under the terms of the Consent Decree and pursuant to 28 C.F.R. 50.7, the United States is allowing the public a 30-day period to comment on the Consent Decree. Accordingly, the United States respectfully requests that the Consent Decree not be entered prior to the expiration of the public comment period.

At the expiration of that period and after the United States has reviewed any public comments that are received, the United States will either request that the Court enter the Consent Decree, or advise the Court that public comments have been received that warrants the United States' withdrawal from the Consent Decree.

United States et al. v. Department of Transportation, State of Hawaii - Notice of Lodging

Respectfully submitted,

9/27/05
Date:


ANGELA O'CONNELL

Senior Counsel
Environmental Enforcement Section
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6485
Facsimile: (415) 744-6476

OF COUNSEL:
Laurie Kermish
Office of Regional Counsel (ORC -2)
EPA Region 9
75 Hawthorne Street
San Francisco, California 94105

EXHIBIT "H"

PERMIT NO. HI S000001

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 *et. seq.*; the "Act"); Hawaii Revised Statutes, Chapter 342D; and Hawaii Administrative Rules, Department of Health (DOH), State of Hawaii, Chapters 11-54 and 11-55;

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
(PERMITTEE)**

is authorized to discharge storm water runoff and certain non-storm water discharges as identified in Part B.2 of this permit from the Department of Transportation (DOT), Highways Division's (DOT-HWYS) Municipal Separate Storm Sewer System (MS4), and additional storm sewer outfalls that may be identified from time to time by the Permittee,

into State Waters in and around the Island of Oahu,

in accordance with the general requirements, discharge monitoring requirements, and other conditions set forth herein, and in the attached DOH "Standard NPDES Permit Conditions," dated December 30, 2005.

All references to Title 40 of the Code of Federal Regulations (CFR) are to regulations that are in effect on July 1, 2004, except as otherwise specified. Unless otherwise specified herein, all terms are defined as provided in the applicable regulations in Title 40 of the CFR.

This permit will become effective on **March 31, 2006**.

This permit and the authorization to discharge will expire at midnight,
September 8, 2009.

Signed this 28th day of February, 2006.


(for) Director of Health

**Final Permit
February 28, 2006**

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ATTACHMENT: STANDARD NPDES PERMIT CONDITIONS (Updated as of December 30, 2005). In case of conflict between the conditions stated in this permit and those specified in the Standard NPDES Permit Conditions, the more stringent conditions shall apply.

A. GENERAL REQUIREMENTS

The Permittee shall:

1. Comply with all materials submitted in and with the reapplication, dated December 2003, and received by DOT letter, dated December 22, 2003.
2. Retain a copy of this permit and all other related materials and the Storm Water Management Program Plan (SWMPP), with all subsequent revisions, at the DOT-HWYS, Oahu District office.
3. Ensure that anyone working under this permit complies with the terms and conditions of this permit.
4. Include the permit number, HI S000001, and the following certification with all information required under this permit:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

5. Submit all information required under this permit to the following addresses:
 - a. Director of Health
Clean Water Branch
Environmental Management Division
Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378
 - b. Regional Administrator
U.S. Environmental Protection Agency, Region 9
Attention: WTR-7; NPDES/DMR
75 Hawthorne Street
San Francisco, CA 94105-3901

B. DISCHARGE LIMITATIONS

1. The Permittee shall effectively prohibit non-storm water discharges through its separate storm sewer system into State Waters. NPDES permitted discharges and non-storm water discharges identified in Part B.2 of this permit are exempt from this prohibition.
2. The following non-storm water discharges may be discharged into the Permittee's separate storm sewer system without an NPDES permit provided that the Permittee determines that such discharges will not contain pollutants in amounts that will cause or contribute to a violation of an applicable water quality standard and the SWMPP shall "identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge."
 - a. Water line flushing;
 - b. Landscape irrigation;
 - c. Diverted stream flows;
 - d. Rising ground waters;
 - e. Uncontaminated ground water infiltration (as defined in 40 CFR §35.2005(20));
 - f. Uncontaminated pumped ground water;
 - g. Discharges from potable water sources and foundation drains;
 - h. Air conditioning condensate;
 - i. Irrigation water;
 - j. Springs;
 - k. Water from crawl space pumps and footing drains;
 - l. Lawn watering runoff;
 - m. Water from individual residential car washing;
 - n. Water from charity car washes;
 - o. Flows from riparian habitats and wetlands;
 - p. Dechlorinated swimming pool discharges;
 - q. Exterior building wash water (water only);
 - r. Residual street wash water (water only), including wash water from sidewalks, plazas, and driveways, but excluding parking lots; and
 - s. Discharges or flows from fire fighting activities.

The permittee may also develop a list of other similar occasional incidental non-storm water discharges (e.g. non-commercial or charity car washes, etc.) that will not be addressed as illicit discharges. These non-storm water discharges must not be reasonably expected (based on information available to the permittee) to be significant sources of pollutants to the MS4, because of either the nature of the discharges or conditions the permittee has established for allowing these discharges to the MS4 (e.g., a charity car wash with appropriate controls on frequency,

PART B
PERMIT NO. HI S000001
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proximity to sensitive waterbodies, BMPs on the wash water, etc.). The permittee shall document in the storm water management program any local controls or conditions placed on the discharges, and include a provision prohibiting any individual non-storm water discharge that is determined to be contributing pollutants to the MS4.

3. The discharge of pollutants from the Permittee's MS4 shall be reduced to the Maximum Extent Practicable (MEP).

C. RECEIVING WATER LIMITATIONS

1. The discharge shall comply with the basic water quality criteria which states:

"All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

- (1) Materials that will settle to form objectionable sludge or bottom deposits;
- (2) Floating debris, oil, grease, scum, or other floating materials;
- (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in receiving waters;
- (4) High or low temperatures; biocides; pathogenic organisms; toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;
- (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
- (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands."

2. The discharge shall not cause or contribute to a violation of any of the applicable beneficial uses or water quality objectives contained in Hawaii Administrative Rules (HAR), Chapter 11-54, titled "Water Quality Standards."
3. The Permittee shall timely inspect the receiving state waters, effluent, and control measures and Best Management Practices (BMPs) to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in HAR, Section 11-54-4. (e.g., the Permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)
4. The Permittee shall immediately take action to stop, reduce, or modify the discharge of pollutants as needed to stop or prevent a violation of the basic water quality criteria as specified in HAR, Section 11-54-4.

D. STORM WATER MANAGEMENT PROGRAM PLAN (SWMPP)

The Permittee shall:

1. Develop, implement, and enforce a Storm Water Management Program Plan (SWMPP) designed to address the requirements of this permit and limit, to the MEP, the discharge of pollutants to and from its MS4 to protect water quality and to satisfy the appropriate water quality requirements of the Act. The SWMPP shall include the following information for each of the SWMPP components described in Part D.1.a - g below:
 - The BMPs, plus underlying rationale, that shall be implemented for each of the program components.
 - The measurable standards and milestones for each of the BMPs, plus underlying rationale, including interim measures to aid in determining level of effort and effectiveness of each program component.
 - The name or position title and affiliation of the person or persons responsible for implementation or coordination of each program component.
 - Monitoring to determine effectiveness of Wasteload Allocation (WLA) controls and of the overall storm water program.

Submittal Date. The SWMPP shall be updated and modified per the requirements of this permit and shall be submitted to DOH and EPA within one (1) year from the effective date of this permit, or as otherwise specified, and shall fully implement the SWMPP upon submittal to DOH and EPA. The Permittee shall continue to implement the existing SWMPP until submittal of the revision. The SWMPP and any of its revisions, additions, or modifications are enforceable components of this permit.

a. Public Education and Outreach

Within one (1) year of the effective date of this permit, the Permittee shall develop, submit, and implement a comprehensive education and involvement program that shall address the components in Parts D.1.a – D.1.g and shall include specific information on who will receive the training, the topics to be addressed (including a pesticides, herbicides, and fertilizer use program), training methods, and a schedule for training all required staff. The Permittee may fulfill portions of this requirement by cooperating with the City and County of Honolulu's (City) storm water public education program.

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- (1) *Targeted Groups.* The Permittee shall address the following targeted groups in the public education plan, and shall describe outreach activities and anticipated frequencies that each activity will be conducted over the permit term:

- DOT-HWYS employees
- DOT-HWYS consultants
- Industrial facilities covered by the NPDES permit program
- Construction industry
- Any other source that the Permittee determines may contribute a significant pollutant load to its MS4

- (2) *General Public.* The Permittee shall include in the public education plan the following activities, with anticipated frequencies that each activity will be conducted over the permit term:

- Public Service Announcements (PSAs)
- Adopt-A-Stream Program
- School programs
- Distribution of brochures
- Participation in special events (e.g., Clean-A-Reef) and exhibits
- Web site
- Pesticides, herbicides, and fertilizer use program

- (3) *Annual Survey.* The Permittee shall evaluate the progress of the public education program by conducting an annual survey of Oahu residents to measure both behavior and knowledge relating to storm water. The results of the survey, with a comparison to past surveys (i.e., December 2000 Storm Water Questionnaire Survey of Parcels Adjacent to Highway Rights-of-Way), as applicable, shall be summarized in the End-of-Year Report.

b. **Public Involvement/Participation**

The Permittee shall include the public in developing, reviewing, and implementing the SWMPP. The draft SWMPP shall be made available to the public on the DOT-HWYS Website and at local offices. An informational meeting shall be scheduled and announced prior to finalizing the SWMPP to solicit comments and answer questions from the public. Other activities to involve the public might include organizing a citizen advisory group to solicit ongoing input from the public about changes to the SWMPP and specific

SWMPP-related projects, or organizing water quality-focused clean-up events to educate the public about storm water impacts from highways.

c. Illicit Discharge Detection and Elimination

(1) Illicit Connection / Illegal Discharge Elimination Program Plan

- (a) *Identification of Illicit Connections and/or Illegal Discharges*** - The Permittee shall revise its SWMPP to develop procedures for the identification of and response to possible illicit connections and illegal discharges. These procedures shall include, but not be limited to, specific time deadlines for responding to identified discharges.
- (b) *Licenses for private drain connections***. The Permittee shall continue to require licenses for private drain connections and maintain a database of all licensed connections to its MS4.
- (c) *Field Screening***. The Permittee shall develop a written plan for observing major and minor outfalls to screen for improper discharges. The plan shall designate priority areas for screening, specify the frequency for screening, and identify the procedures to be followed if a discharge is observed. The field screening plan shall be submitted to DOH within one (1) year of the effective date of this permit.
- (d) *Investigate complaints***. The Permittee shall promptly investigate observed, suspected, or reported illicit flows and pursue enforcement actions, as appropriate. To assist in this effort, within one (1) year of the effective date of this permit, the Permittee shall:
 - (i)** Develop a database to identify improper discharge activity by Tax Map Key (TMK). The database shall include information about each suspected improper discharge, the Permittee's investigation of that discharge, follow-up activities, and the resolution of each discharge;
 - (ii)** Implement a program to facilitate public reporting of illicit discharges (i.e., environmental hotline and/or website for reporting); and
 - (iii)** Develop and implement a response plan to be consistent with the requirements in this permit.

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- (e) *Enforcement.* The Permittee shall ensure compliance with local ordinances and pursue enforcement actions against property owners with illegal drain connections and persons illegally discharging pollutants to its MS4.
- (f) *Prevent and Respond to Spills to the DOT-HWYS MS4.* The Permittee shall develop a program to prevent, respond to, contain, and clean up all wastewater and other spills that may enter into their MS4 from any source (including private laterals and failing cesspools). This program shall be included in the SWMPP within one (1) year of the effective date of this permit. Spill response teams, which may consist of local, state, and/or federal agencies, shall prevent entry of spills into the DOT-HWYS MS4 and contamination of surface water, ground water, and soil to the MEP.

The Permittee shall coordinate spill prevention, containment, and response activities throughout all appropriate departments, programs, and agencies to ensure maximum water quality protection at all times.

The Permittee shall develop and implement a procedure whereby DOH is notified of all wastewater spills or overflows from private laterals and failing septic systems into their MS4. The Permittee shall prevent, respond to, contain, and clean up wastewater from any such notification.

- (g) *Facilitate Disposal of Used Oil and Toxic Materials.* The Permittee shall implement or continue to implement a program(s) to facilitate the proper management and disposal or recycling of used oil, vehicle fluids, toxic materials, and other household hazardous wastes. Such a program shall include educational activities, public information activities, and identification of collection sites or methods. The program(s) shall be implemented within one (1) year of the effective date of the permit.
- (h) *Tracking* - The Permittee shall maintain a database of illicit connections, illegal discharges, and spills that tracks the type of discharge, responsible party, DOT-HWYS response, and resolution of the discharge to the MS4.
- (i) *Training* - The Permittee shall develop and provide training within one (1) year of the effective date of this permit, and annually

thereafter, to staff on identifying and eliminating illicit connections, illegal discharges, and spills to the MS4. This training shall be specific to DOT-HWYS activities, policies, and procedures.

d. Construction Site Runoff Control

(1) *Plan Review and Approval* - The Permittee shall:

- (a)** Not allow construction to commence on any contract, in-house, or encroachment (3rd party) permit project unless and until it has verified that the project has received from DOH a Notice of General Permit Coverage (NGPC) under HAR, Chapter 11-55, Appendix C, NPDES General Permit Authorizing the Discharge of Storm Water Associated with Construction Activity (General Construction Activity Storm Water permit) (unless the project will disturb less than one (1) acre of land) and satisfied any other applicable requirements of the NPDES permit program (i.e., an individual NPDES permit);
- (b)** Ensure that, prior to issuing a connection or discharge permit requiring coverage under the General Construction Activity Storm Water permit and/or any other applicable requirements of the NPDES permit program, the project operator has provided proof of filing a Notice of Intent (NOI) or NPDES application for permit coverage and that a Construction BMPs Plan has been prepared; and
- (c)** Review the applicable Site-Specific BMP Plan to verify that it fully meets all requirements of DOT-HWYS' Standard Specifications and/or Special Provisions (SSPs), the General Construction Activity Storm Water permit, and any other requirements under the NPDES permit program, as applicable.

Within 180 days of the effective date of this permit, the Permittee shall develop and submit for approval a checklist that its reviewers shall use in evaluating the BMP Plans pursuant to this paragraph. Copies of this checklist shall be provided to applicants for encroachment permits and to contractors for their use in developing construction SWPPPs for DOT-HWYS-contracted construction projects.

- (2) *Standard Specifications and/or Special Provision Revision* - The Permittee shall revise its SSPs to require use of the current edition of the City's "Best Management Practices Manual for Construction Sites in Honolulu,"**

(City BMP Manual) and the City's "Rules for Soil Erosion Standards and Guidelines," on all contract, in-house, and permit construction projects in Oahu. The Permittee shall incorporate these revised SSPs, either explicitly or by reference, into its revised SWMPP.

- (3) *Construction Site BMPs* - The Permittee shall revise the listing and description of Construction Activity BMPs in its SWMPP to include, at a minimum, the BMPs as contained and described in the City BMP Manual.
- (4) *Construction BMP Field Manual* - Within 180 days of the effective date of the permit, the Permittee shall develop and submit for approval a Construction BMPs field manual describing various construction storm water BMPs installation and maintenance procedures, including, at a minimum, all BMPs listed in the Construction BMP Program Plan component of the December 2003 SWMPP. The DOT-HWYS shall continue to use the existing field checklist during the development of the Construction BMPs field manual. After submittal, the DOT-HWYS shall implement the Construction BMPs field manual. After approval, a copy of this Construction BMPs field manual shall be provided to all DOT-HWYS field staff involved in construction and/or erosion control projects (contract, in-house [i.e., Maintenance Division] and/or encroachment permit).
- (5) *Training* - The Permittee shall provide annual training on the Construction BMPs Program Plan to all DOT-HWYS staff with construction storm water responsibilities, including construction engineers, maintenance staff, and plan reviewers. This training shall be specific to DOT-HWYS activities (including the proper installation and maintenance of approved BMPs), policies, and procedures.
- (6) *Initial Construction Inspections* - Prior to the initiation of ground-disturbing activities at any site, except for activities associated with the installation of BMPs at a site, an engineer or qualified inspector employed or retained by the Permittee who reviews and becomes familiar with the BMPs Plan, shall inspect the site to document whether the BMPs required by the BMPs Plan have been installed correctly and in the correct locations prior to the commencement of ground-disturbing activity.
- (7) *Inspections and Enforcement* - The Permittee shall revise its SWMPP to specify mandatory minimum project inspection and enforcement requirements for DOT-HWYS inspectors at all construction sites as follows:

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- (a) In addition to inspections required by the General Construction Activity Storm Water permit, and as otherwise required under the NPDES permit program, all in-house and contract construction projects shall be inspected at least monthly by a qualified construction inspector who is independent (i.e., not involved in the day-to-day planning, design, or implementation) of the construction projects to be inspected. The Permittee may use more than one (1) qualified construction inspector for these inspections. The Permittee shall develop and implement a standard inspection form and reporting procedures for use in these inspections. The inspection form shall include, at a minimum, a checklist for the proper installation of BMPs specified in the BMP plan. The reporting procedures shall include, at a minimum, notification of any deficiencies to the DOH. The Permittee shall further develop and implement written procedures for appropriate corrective actions and follow-up inspections when an inspected project is not in full compliance with the NPDES permit, the General Construction Activity Storm Water permit, or any other applicable requirements under the NPDES permit program. These enforcement procedures shall be submitted to DOH for review and acceptance within one (1) year of the effective date of this permit.
- (b) All encroachment permit construction projects shall be inspected at least once annually or once during the life of the project, whichever comes first, by a qualified construction inspector who is independent (i.e., not involved in the day-to-day planning, design, or implementation) of the construction projects to be inspected. The Permittee may use more than one (1) qualified construction inspector for these inspections. The Permittee shall develop and implement a standard inspection form and reporting procedures for use in these inspections. The inspection form shall include, at a minimum, a checklist for the proper installation of BMPs specified in the BMPs Plan. The reporting procedures shall include, at a minimum, notification of any deficiencies to the DOH. The Permittee shall further develop and implement written procedures for appropriate corrective actions and follow-up inspections when an inspected project is not in full compliance with the NPDES permit or the General Construction Activity Storm Water permit. These enforcement procedures shall be submitted to DOH for review and acceptance within one (1) year of the effective date of this permit.

- e. **Post-Construction Storm Water Management in New Development and Redevelopment**
- (1) *Develop design criteria* - Within one (1) year of the effective date of this permit, the Permittee shall develop, submit, and implement a Post Construction BMP Manual with specific criteria establishing when permanent post-construction BMPs must be included in project design to address storm water impacts and pollutants of concern. These criteria shall take into consideration, among other things, potential water quality impacts anticipated from the permanent post-construction conditions. Permanent post-construction BMPs to be considered shall include those designed to treat storm water runoff and other structural type devices.
 - (2) *Project Design Review* - The Permittee shall not advertise any construction project nor award any construction contract unless and until the project design has been reviewed to ensure that appropriate permanent post-construction BMPs have been included in the project design and are included in the bid package. No project shall proceed without the inclusion of appropriate permanent post-construction BMPs unless there is specific documentation demonstrating that such post-construction BMPs are not practicable. Project documents for projects that will include installation of permanent post-construction BMPs shall also include appropriate requirements for their future continued maintenance.
 - (3) *SWMPP Revisions* - The Permittee shall revise its SWMPP as applicable to:
 - (a) Require installation and appropriate maintenance of permanent post-construction BMPs, where applicable, on all New Development and Significant Redevelopment projects that the Permittee undertakes as well as for similar encroachment permit projects located within the Permittee's rights-of-way.
 - (b) Add the following additional permanent post-construction BMPs to the current list in Section 3 of the New Development and Significant Redevelopment BMP Program Plan, Section VIII.M. of the SWMPP, dated December 2003: infiltration basins, infiltration trenches, media filters, Continuous Deflective Separation (CDS) units, and other similar technologies.
 - (4) *BMP, Operation and Maintenance, and Inspection Database* - Within two (2) years of the effective date of this permit, the Permittee shall

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develop and implement a system to compile a database of post-construction BMPs and the frequency of maintenance and inspection of the BMPs. The database shall include both public and private activities or projects which initially discharge into the Permittee's MS4 and shall begin in the plan review stage with a database or geographic information system (GIS). Within the permit renewal application, the Permittee shall provide the plan to map the post-construction BMPs on the GIS. In addition to the standard information collected for all projects (e.g., project name, owner, location, start/end date, etc.), the database shall also include, at a minimum:

- Type and number of Source Control BMPs
 - Type and number of Treatment Control BMPs
 - Latitude/Longitude coordinates of controls using Global Positioning Systems (GPS) and NAD83 Datum
 - Photographs of controls
 - Operation and maintenance requirements, including frequency
 - Frequency of inspections
- (5) *Retrofit Feasibility Study* - The Permittee shall complete a feasibility study to retrofit the existing MS4 discharging to receiving waters listed pursuant to Section 303(d) of the Act for either sediment, siltation, turbidity, and/or trash. The retrofits may include water quality BMPs to meet State Water Quality Standards. A detailed scope of the feasibility study shall be submitted to DOH within one (1) year of the effective date of this permit. A final feasibility study shall be submitted to DOH within three (3) years of the effective date of this permit.
- (6) *Education and Training*
- (a) *Project Proponents*. Within one (1) year of the effective date of this permit, the Permittee shall provide education and outreach material for those parties who apply for DOT permit (i.e., developers, engineers, architects, consultants, construction contractors, excavators, and property owners) on the selection, design, installation, operation and maintenance of storm water treatment controls. The outreach material may include a simplified flowchart for thresholds triggering permits and requirements, a list of required permits, implementing agencies, fees, overviews, timelines and a brief discussion of potential environmental impacts associated with storm water runoff.

- (b) The Permittee shall provide annual training to all DOT-HWYS staff with project design and construction storm water responsibilities, including design engineers, construction engineers, and plan review staff, specific to DOT-HWYS activities, policies, and procedures and shall include training on the DOT-HWYS Post Construction BMP Manual.

f. Pollution Prevention/Good Housekeeping

(1) Debris Control BMPs Program Plan

- (a) *Inspection/Maintenance Schedule* - The Permittee shall revise its SWMPP to include procedures and a schedule for inspections of:
 - (i) All state highways on Oahu for the purpose of identifying if sweeping of roadways, shoulders, and/or medians is needed, and
 - (ii) All state highway storm drainage system catch basins, gutters and open ditches, trenches, and storm drains on Oahu for the purpose of identifying if cleaning of such structures is needed.

In both cases, the need for sweeping and/or structure cleaning shall be determined based upon material accumulation rates and potential threat of discharge to State waters that may have an effect on water quality in addition to other criteria. The schedule shall provide that each highway mile and storm drainage feature is inspected at least once annually. The adopted procedures shall provide for the identification of highway segments and their associated storm drainage features that may require more frequent sweeping and/or structure cleaning based upon material accumulation rates and potential threat of discharge to State waters that may have an effect on water quality. The procedures shall establish debris accumulation thresholds above which sweeping and/or structure cleaning must occur. The priority-based schedule shall be submitted within one (1) year of the effective date of this permit.

- (b) *Storm Drain Mapping* - Within 180 days of the effective date of the permit, the Permittee shall submit to DOH a schedule for completing the mapping by the end of the permit term. The Permittee shall complete mapping of its MS4 including outfalls, storm drain pipes, open channels, storm drainage features, and facilities.

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- (c) *Asset Management System* - The Permittee shall develop and implement a comprehensive asset management system of the Oahu District's storm drain system and related appurtenances including maintenance equipment, to ensure appropriate debris removal and system maintenance. The asset management system shall, at a minimum, include identification of the number and location of all drain inlets and outfalls. The Permittee shall use this asset management system to establish priorities and to schedule and track efforts of appropriate system maintenance and debris removal program activities such as street sweeping, catch basin cleaning, and green waste and accumulated soil removal. The asset management system shall include justification of its priorities on the basis of potential impacts to water quality. The asset management system shall be completed within two (2) years of the effective date of this permit, included in the SWMPP, and implemented upon submittal.
 - (d) *Storm Drain Placards* - The Permittee shall revise its SWMPP to develop procedures and a schedule to install and maintain storm drain placards. Priority shall be given to the Permittee's highways in industrial and commercial areas and areas with pedestrian traffic. The Permittee shall develop a system to track placement of placards and procedures for maintenance staff to inspect placards during routine maintenance activities.
- (2) Chemical Applications BMPs Program Plan
- (a) *Training* - The Permittee shall develop and implement a specific training program for all potential appliers (bulk and hand-held) of fertilizers, pesticides, and herbicides in the proper application of these substances. The Permittee shall not permit the application of fertilizers, pesticides, or herbicides unless the applier has first received this training.
 - (b) *Implement appropriate requirements for pesticide, herbicide, and fertilizer applications.* The Permittee shall revise its SWMPP and implement BMPs to reduce the contribution of pollutants associated with the application, storage, and disposal of pesticides, herbicides, and fertilizers from municipal areas and activities to its MS4 within one (1) year of the effective date of this permit. Municipal areas and activities include, at a minimum, municipal facilities, public right-of-ways, and landscaped areas.

Such BMPs shall include, at a minimum: (1) educational activities, permits, certifications and other measures for municipal applicators; (2) integrated pest management measures that rely on non-chemical solutions; (3) the use of native vegetation; (4) chemical application, as needed; and (5) the collection and proper disposal of unused pesticides, herbicides, and fertilizers.

The Permittee shall ensure that their employees or contractors or employees of contractors applying registered pesticides, herbicides, and fertilizers shall work under the direction of a certified applicator, follow the pesticide label, and comply with the State requirements. All Permittee employees or contractors applying pesticides, herbicides or fertilizers shall receive training on the BMPs annually.

(3) Erosion Control BMPs Program Plan

(a) The Permittee shall revise its SWMPP to:

- (i) Include water quality impacts as a priority in selecting projects for permanent erosion control improvements, ensuring that erosional areas with the potential for significant water quality impact, but with limited public safety concerns, are also considered a high priority for remediation. Identification of erosional areas with the potential for significant water quality impact shall include areas where there is evidence of rilling, gullyng, and/or other evidence of significant sediment transport, and areas in close proximity to receiving waters listed pursuant to Section 303(d) of the Act as impaired for either sediment, siltation and/or turbidity. The Permittee shall include procedures to identify and implement erosion control projects based on water quality concerns.**
- (ii) Require the implementation of temporary erosion control measures (e.g., erosion control blankets and/or fabrics, gravel bag placement and silt fencing/fiber rolls) on erosional areas with the potential for significant water quality impact if a permanent solution is not immediately possible. Notwithstanding any other implementation provisions, the revised SWMPP shall require the implementation of such erosion control measures on the 10 highest priority sites or a maximum of \$1.5 million spent on the highest priority sites within two (2) years of submittal of the revised SWMPP.**

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- (iii) Modify the list of approved Erosion and Sediment Control BMPs to include, at a minimum, at least all of those contained in the City BMP Manual. The revised SWMPP shall also provide for the implementation of alternative Erosion and Sediment Control BMPs, where appropriate.
 - (iv) The Permittee shall develop and implement a program to prevent erosion at its storm drain system outlets. The Permittee shall install velocity dissipators or other BMPs to reduce erosion at these locations.
 - (b) Within one (1) year of the effective date of the permit, the Permittee shall submit a list of projects and implementation schedule for permanent erosion control improvements as described in D.1.f.(3)(a)(i) to DOH.
- (4) Maintenance Facilities BMPs Program Plan
- (a) *Baseyard Plans* - For each maintenance baseyard located on Oahu, the Permittee shall develop and implement a site-specific Storm Water Pollution Control Plan (SWPCP) that includes, among other things, a detailed site plan, site description, facility layout, description of potential pollutant sources, site-specific BMPs, inspection procedures, and spill cleanup procedures. An individual at each facility (e.g., yard foreman) shall be charged with ensuring implementation of the SWPCP. This individual shall be trained to conduct inspections and identify areas for BMPs improvement. To ensure consistency and provide assistance and oversight, the Permittee shall identify an individual, also trained to conduct inspections and identify areas for BMPs improvement and independent of any specific baseyard, who shall conduct inspections of all six (6) baseyards at least quarterly. The Permittee shall submit the site-specific SWPCP for each maintenance baseyard within 180 days of the effective date of this permit.
 - (b) *Dewatering Facility* - The Permittee shall identify and construct, if necessary, a dewatering facility for dewatering and disposal of debris removed from its MS4. DOT-HWYS shall submit a plan for how it will address dewatering wastes to DOH within one (1) year of the effective date of the permit.

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- (c) *Maintenance BMPs* - The Permittee shall develop and implement a written set of maintenance BMPs for routine and emergency in-house activities within 90 days of the effective date of this permit. Activity specific BMPs shall be organized as a manual and be created in a format that facilitates its use by field staff (i.e., field friendly). It shall be distributed to all field staff and shall complement the overall goals of the SWMPP.
- (d) *Training* - The Permittee shall develop and implement a formal storm water awareness training program for Oahu District Maintenance supervisors and staff that identifies potential sources of pollution, general BMPs that can be used to reduce and/or eliminate such sources, and specific BMPs for their facilities and activities. The training shall incorporate components of the public education campaign being implemented by the City and educate staff that they serve a role in protecting water quality. Maintenance supervisors and staff shall be made aware of the NPDES permit, the overall SWMPP, the SWPCP for their baseyard, and the applicable BMPs Program(s). The training shall be developed and submitted to DOH for review and acceptance within two (2) years of the effective date of this permit. Permittee maintenance staff shall receive training within three (3) years of the effective date of this permit, and annually thereafter.

(5) Storm Water Pollution Control for Flood Control Projects

- (a) *Pump Station* - The Permittee shall implement the flood control project activities described in the SWMPP, including monthly inspection and maintenance of the Interstate H-1 Punahou Pump Station.

g. Industrial and Commercial Activities Discharge Management Program

The Permittee shall develop and implement an industrial and commercial discharge management program to reduce to the MEP the discharge of pollutants from all industrial and commercial facilities and activities which initially discharge into the Permittee's MS4. At a minimum, the program shall include:

- (1) *Inventory and Map of Industrial Facilities and Activities*. The Permittee shall update and submit, in electronic and paper format, the industrial facilities and activities inventory (industrial inventory), sorted by TMK,

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and map of such facilities and activities discharging, directly or indirectly, to its MS4 within the 4th End-of-Year Report (also known as the permit renewal application). The industrial inventory update may be based on the following:

- ◆ Findings from follow-up investigations of the December 2000 Storm Water Questionnaire Survey of Parcels Adjacent to Highway Rights-of-Way (Questionnaire Survey);
- ◆ Available information about parcel owners from the City and the State; and/or
- ◆ Collection of new information obtained during field activities or through other readily available intra-agency informational databases (e.g., business licenses, pretreatment permits, sanitary sewer hook-up permits).

The industrial inventory shall include the facility name, street address, TMK, nature of business or activity, Standard Industrial Classification (SIC) code(s) that best reflect the facility product or service, principal storm water contact, receiving State water, and whether a Notice of General Permit Coverage (NGPC) under HAR, Chapter 11-55, Appendix B, NPDES General Permit Authorizing the Discharge of Storm Water Associated with Industrial Activities (General Industrial Storm Water permit) or any other applicable NPDES permit has been obtained, including a permit or file number and issuance date.

At a minimum, the industrial inventory shall include facilities and activities such as:

- ◆ Municipal Landfills (open and closed)
- ◆ Hazardous waste recovery, treatment, storage and disposal facilities
- ◆ Facilities subject to Section 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11023
- ◆ Findings from follow-up investigations of the industrial facilities identified in the Questionnaire Survey
- ◆ Facilities subject to General Industrial Storm Water permit coverage or any other applicable NPDES permit coverage which are adjacent to the DOT-HWYS right-of-way or discharge to the MS4
- ◆ And any other industrial facility that either the Permittee or DOH determines is contributing a substantial pollutant loading to the DOT-HWYS MS4.

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- (2) *Inventory and Map of Commercial Facilities and Activities.* The Permittee shall update and submit, in electronic and paper format, the commercial facilities and activities inventory (commercial inventory), sorted by priority areas, and map of such facilities and activities discharging, directly or indirectly, to its MS4 within the permit renewal application. The commercial inventory update may be based on the following:
- ◆ Findings from follow-up investigations of the Questionnaire Survey;
 - ◆ Available information about parcel owners from the City and the State; and/or
 - ◆ Collection of new information obtained during field activities or through other readily available intra-agency informational databases (e.g., business licenses, pretreatment permits, sanitary sewer hook-up permits).

The commercial inventory shall include, by priority area, the facility name, street address, TMK, nature of business or activity, SIC code(s) that best reflect the facility product(s) or service(s), principal storm water contact, and receiving State water.

At a minimum, the commercial inventory shall include facilities and activities such as:

- ◆ Findings from follow-up investigations of the commercial facilities identified in the Questionnaire Survey
 - ◆ Retail Gasoline Outlets
 - ◆ Retail Automotive Services, including Repair Facilities
 - ◆ Restaurants
 - ◆ Any other commercial facility that either the Permittee or DOH determines is contributing pollutants to the DOT-HWYS MS4 that may cause or contribute to an exceedance of State water quality standards.
- (3) *Prioritized Areas for Industrial and Commercial Facility and Activity Inspections.* The Permittee shall continue to update the plan to designate priority areas for industrial and commercial facility and activity inspections. The prioritized area plan should take into account the number of industrial and commercial facilities in the area, the density of these facilities, previous storm water violations in the area, and water quality impairments in the area. The plan shall identify priority areas and set a schedule for inspections within each area over the duration of this permit.

The prioritized area plan shall be submitted to DOH within one (1) year of the effective date of this permit.

(4) *Inspection of Industrial and Commercial Facilities and Activities*

The industrial/commercial inspection program shall be submitted within one (1) year of the effective date of this permit and updated as appropriate to reflect the outcomes of the investigations discussed in the following paragraphs.

- (a) The Permittee shall complete follow-up investigations on all industrial, commercial, and high-density residential parcels discharging to its MS4 that are identified in the Questionnaire Survey.
- (b) The Permittee shall ensure that all industrial and commercial facilities and activities identified in the industrial and commercial inventories required under Parts D.1.g.(1) and D.1.g.(2) are inspected according to the schedule below. Inspectors shall determine compliance with local ordinances and the terms of this permit. If DOH inspects a facility for compliance with the General Industrial Storm Water permit coverage or any other applicable NPDES permit, then the Permittee does not need to inspect the facility that year.

All industrial facilities within a priority area shall be inspected in accordance with the applicable portions of the "NPDES Compliance Inspection Manual" (EPA 300-B-94-014), dated September 1994. The Permittee shall send the inspection report(s) to the DOH within two (2) months of the inspection date. The Permittee shall also inspect commercial facilities in the priority area to ensure compliance with local ordinances and the terms of this permit. The Permittee shall conduct, at a minimum, the following number of industrial and commercial inspections each year in the priority areas scheduled for inspection:

Permit Year	Number of Inspections
1	20
2	30
3	40
4	60

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Permit Year	Number of Inspections
5	80

If the Permittee inspects all industrial and/or commercial facilities in a priority area before completing the minimum number of inspections that year, the Permittee shall begin inspections in the next priority area scheduled for inspections. Each industrial facility that does not have NPDES permit coverage under the NPDES permit program shall be inspected at least twice every five (5) years, and each industrial facility that does have such NPDES permit coverage is inspected at least once every five (5) years. Commercial dischargers are to be ranked according to relative risk of discharge of contaminated runoff to the DOT-HWYS MS4. The highly ranked commercial facilities shall be inspected at least once every five (5) years.

Inspections must consist of a review of implementation of BMPs for compliance with local ordinances and this permit to assess potential impacts to receiving waters. Inspections shall also assess potential sources of pollutants to the DOT-HWYS MS4 and require controls to prevent discharge of pollutants to the DOT-HWYS MS4.

Inspectors shall be trained to identify deficiencies, assess potential impacts to receiving waters, and evaluate the appropriateness and effectiveness of deployed BMPs and SWPCPs, if applicable.

The inspectors shall use an inspection checklist, or equivalent, and photographs to document site conditions and BMP conditions.

Records of all inspections shall be maintained for a minimum of five (5) years, or as otherwise indicated.

- (5) *Enforcement Policy for Industrial Facilities and Activities.* The Permittee shall develop and submit an enforcement policy that shall go into effect when it has been documented that an industrial or commercial facility has failed to comply with local ordinances and/or terms of this permit. This policy shall be submitted to DOH for review and acceptance within 180 days of the effective date of this permit. The policy shall be part of the overall escalating enforcement policy and must consist of the following:

- ◆ Issuance of written documentation to a facility representative within two (2) weeks of storm water deficiencies identified during

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inspection. Documentation must include copies of all field notes, correspondence, photographs, and sampling results if applicable.

- ◆ A timeline for correction of the deficiencies.
- ◆ Provisions for re-inspection and potential enforcement actions, if necessary.

In the event the Permittee has exhausted all available sanctions and cannot bring a facility or activity into compliance with local ordinances and this permit, or otherwise deems the facility or activity an immediate and significant threat to water quality, the Permittee shall provide oral notification to DOH within one (1) week of such determination. Oral notification shall be followed by a copy of all inspection checklists, notes, photographs, and related correspondence within two (2) weeks of the determination. In instances where an inspector identifies a facility that has not applied for the General Industrial Storm Water permit coverage or any other applicable NPDES permit, the Permittee shall provide oral notification to DOH within one (1) week of such determination. Such oral notification shall be followed by written notification within two (2) weeks of the determination.

- (6) *Training.* The Permittee shall develop and provide training to staff on how to conduct industrial and commercial inspections, the types of facilities covered by the General Industrial Storm Water permit coverage or any other applicable NPDES permit, components in a SWPCP for industrial facilities, BMPs and source control measures for industrial and commercial facilities, and inspection and enforcement techniques. This training shall be specific to DOT-HWYS activities, policies, and procedures. The training shall be developed and submitted to DOH for review and acceptance within 90 days of the effective date of this permit. Permittee inspectors shall receive training within 180 days of the effective date of this permit, and annually thereafter.
2. Revise the SWMPP, as necessary, if any discharge limitation or water quality standard established in HAR, Section 11-54-4 is exceeded. The revisions shall include BMPs and/or other measures to reduce the amount of pollutants found to be in exceedance from entering State Waters.
3. Properly address all modifications, concerns, requests, and/or comments to the satisfaction of the DOH and/or EPA.
 - a. *SWMPP Modifications.* The storm water pollution control activities described in the SWMPP may need to be modified, revised, or amended from time to time

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over the life of the permit to respond to changed conditions and to incorporate more effective approaches to pollutant control. Minor changes may be proposed by the Permittee or requested by the the Director of Health (Director) or the Regional Administrator of the EPA. Proposed changes that imply a major reduction in the overall scope and/or level of effort of the SWMPP must be made for cause and in compliance with 40 CFR §122.62 and Part 124. A written report shall be submitted to the Director for approval at least 30 days prior to the initiation date of the major modification. The Permittee shall report and justify all other modifications made to the SWMPP in the End-of-Year Report for the year in which the modification was made.

- b. System Modifications include any planned physical alterations or additions to the permitted MS4 and any existing outfalls newly identified over the term of the permit. All alterations and/or additions to the DOT-HWYS MS4 shall be indicated in the End-of-Year Report. Major alterations and/or additions shall be identified by letter within 30 days of the completion of the alteration and/or addition.

E. MONITORING REQUIREMENTS

1. Annual Monitoring Plan

- a. The Permittee shall submit the Annual Monitoring Plan to the Director by June 1st of each year for review and approval. The Annual Monitoring Plan shall be implemented over the coming fiscal year.
- b. The plan shall, at a minimum, include the following items:
 - (1) Written narrative of the proposed monitoring plan's objectives and description of activities;
 - (2) Written documentation of the following:
 - (a) Type, frequency, and location of data gathered on levels of pollutants in non-stormwater discharges to the MS4;
 - (b) Characteristics (timing, duration, intensity, total rainfall) of the storm event(s);
 - (c) Parameters for measured pollutant loads; and
 - (d) Range of discharge volumes to be monitored, as well as the timing, frequency, and duration at which they are identified;
 - (3) Written documentation of the analytical methods to be used;
 - (4) Written documentation of the Quality Assurance/Quality Control procedures to be used; and
 - (5) Estimated budget to be implemented over the coming fiscal year.

2. Ala Wai Canal, Kawa Stream, and Waimanalo Stream WLA

Working jointly with the City, the Permittee shall propose an implementation and monitoring plan for the existing Ala Wai Canal, Kawa Stream, and Waimanalo Stream WLA. The implementation plan shall identify specific DOT-HWYS activities targeted to reducing total nitrogen and total phosphorus discharges in each watershed as necessary to comply with the WLAs. The monitoring plan shall specify the water quality monitoring and activity tracking necessary to demonstrate efforts to comply with the urban source WLAs assigned to both the Permittee and City. The Permittee shall submit these plans to DOH within one (1) year of the effective date of this permit.

3. Other WLAs

As additional WLAs are adopted by DOH that identify the Permittee as a source, the Permittee shall develop implementation and monitoring plans for a minimum of one (1) additional WLA per year within one (1) year of the adoption date.

F. REPORTING REQUIREMENTS

1. Mid-Year and End-of-Year Reports

- a. The Permittee shall submit the Mid-Year Report by March 31st of each year, which shall cover the six (6) month period beginning on July 1st and ending on December 31st. The Permittee shall submit the End-of-Year Report by October 31st of each year, which shall cover the past fiscal year.
- b. The Permittee shall revise its SWMPP to include a description of reporting procedures and activities, including schedules and proposed content of reports such that, at a minimum, the following is reported for each storm water program component in each report:
 - (1) *Requirements* - Describe what the Permittee was required to do (describe status of compliance with conditions of this permit and other commitments set forth in the SWMPP).
 - (2) *Past Activities* - Describe activities over the reporting period in comparison to the requirements, including, where applicable, progress accomplished toward meeting specific measurable goals, standards and milestones or other specific performance requirements. When requirements were not fully met, include a detailed explanation as to why the Permittee did not meet its commitments for the reporting period. Also describe an assessment of the SWMPP, including progress towards implementing each of the SWMPP program components.
 - (3) *Future Activities* - Describe planned activities, including, where applicable, specific activities to be undertaken during the next reporting period toward accomplishing specific measurable goals, standards and milestones or other specific performance requirements.
 - (4) *Resources* - Report on the status of the Permittee's resource base for implementing this NPDES permit during the applicable reporting period and an estimate of the resources over and above those required in the current reporting period that will be required in the next reporting period.
- c. *Modifications*. In each report, the Permittee shall describe any modifications made to the SWMPP and implementation schedule during the past year, including justifications. The Permittee shall also describe major modifications made to the Permittee's MS4, including, but not limited to, addition and removal of outfalls, drainage lines, and treatment facilities.

- d. *Program Effectiveness Reporting.* Within one (1) year of the effective date of the permit, the Permittee shall submit to DOH a written strategy for determining effectiveness of its SWMPP. The strategy shall include water quality monitoring efforts as well as program implementation information and other indicators. The Permittee shall include an assessment of program effectiveness and identification of water quality improvements or degradation beginning with the second End-of-Year Report.

2. Annual Monitoring Report

- a. The Permittee shall submit the Annual Monitoring Report by October 31st of each year. The Annual Monitoring Report shall cover the past fiscal year.
- b. The monitoring report shall at a minimum, include the following items:
 - (1) Written narrative of the past fiscal year's activities, including a description of objectives, activities, and coordination with other agencies.
 - (2) Data gathered on levels of pollutants in non-storm water discharges to the DOT-HWYS MS4; and
 - (3) Using rainfall data collected by the Permittee and other agencies, the Permittee shall relate rainfall events, measured pollutant loads, and discharge volumes from the watershed and other watersheds that may be identified from time to time by the Director or Permittee.

3. Memorandum of Understanding (MOU)

- a. **Roles and Responsibilities of DOT-HWYS**

DOT-HWYS shall continue to maintain and comply with the "Memorandum of Understanding Between the Department of Transportation Highways Division, State of Hawaii, and the Department of Environmental Services and the Department of Facility Maintenance, City and County of Honolulu," signed by the Department of Environmental Services on December 19, 2001; by the Department of Facility Maintenance on December 27, 2001; and the State Department of Transportation, Highways Division on February 1, 2002. Amendments to the MOU, if any, shall be summarized in the End-of-Year Report.

- b. **Legal Authority of DOT-HWYS**

DOT-HWYS shall continue to maintain and comply with the "Memorandum of Understanding (MOU) Between Department of Transportation, State of Hawaii,

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and Department of Health, State of Hawaii" which was executed on July 8, 1999, because 40 CFR 122.26(d)(2)(i) requires that DOT-HWYS obtain the legal authority to control the discharge of pollutants to its storm sewer system. Amendments to the MOU, if any, shall be summarized in the End-of-Year Report.

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**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.; the "Act"); Hawaii Revised Statutes, Chapter 342D; and Hawaii Administrative Rules (HAR), Department of Health (DOH), State of Hawaii, Chapters 11-54 and 11-55;

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
AIRPORTS DIVISION
(PERMITTEE)**

is authorized to discharge storm water runoff and certain non-storm water discharges as identified in Part B.2 of this permit from the Department of Transportation (DOT), Airports Division's (DOT-AIR) Small Municipal Separate Storm Sewer System (Small MS4) at the Honolulu International Airport (HNL), and additional storm sewer outfalls that may be identified from time to time by the Permittee,

into Manuwai Canal, Kaloaloe Canal, Mamala Bay, Keehi Lagoon, and the Reef Runway Marine Pond adjacent to the HNL, Island of Oahu,

in accordance with the general requirements, discharge monitoring requirements, and other conditions set forth herein, and in the attached DOH "Standard NPDES Permit Conditions," dated December 30, 2005.

All references to Title 40 of the Code of Federal Regulations (CFR) are to regulations that are in effect on July 1, 2004, except as otherwise specified. Unless otherwise specified herein, all terms are defined as provided in the applicable regulations in Title 40 of the CFR.

This permit will become effective on **January 19, 2007**.

This permit and the authorization to discharge will expire at midnight, **June 1, 2011**.

Signed this 19th day of January, 2007.


(for) Director of Health

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ATTACHMENT: STANDARD NPDES PERMIT CONDITIONS (Updated as of December 30, 2005). In case of conflict between the conditions stated in this permit and those specified in the Standard NPDES Permit Conditions, the more stringent conditions shall apply.

A. GENERAL REQUIREMENTS

The Permittee shall:

1. Comply with all materials submitted in and with the following:
 - a. Reapplication (consisting of the *Fiscal Year 2004-2005 Annual Report* and the Signatory and Certification Statement to NPDES Permit Applications, dated September 26, 2005, for coverage under an NPDES permit for the HNL Small MS4) received on October 6, 2005, by DOT memo (AIR-OME 05.195), dated September 29, 2005; and
 - b. The DOT-AIR revision to Section 3 of the End-of-Year Report, dated April 6, 2006 (AIR-E 06.0003), received on April 17, 2006.
2. Retain a copy of this permit and all other related materials and the Storm Water Management Program (SWMP), with all subsequent revisions, at the DOT-AIR, HNL office.
3. Ensure that anyone working under this permit complies with the terms and conditions of this permit.
4. Include the permit number, **HI S000005**, and the following certification with all information required under this permit:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

5. Submit all information required under this permit to the following addresses:
 - i. Director of Health
Clean Water Branch
Environmental Management Division
Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

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- b. Regional Administrator
U.S. Environmental Protection Agency, Region 9
Attention: WTR-7; NPDES/DMR
75 Hawthorne Street
San Francisco, CA 94105-3901

B. DISCHARGE LIMITATIONS

1. The Permittee shall effectively prohibit non-storm water discharges through its separate storm sewer system into State Waters. NPDES permitted discharges and non-storm water discharges identified in Part B.2 of this permit are exempt from this prohibition.
2. The following non-storm water discharges may be discharged into the Permittee's separate storm sewer system without an NPDES permit provided that the Permittee determines that such discharges will not contain pollutants in amounts that will cause or contribute to a violation of an applicable water quality standard and the SWMP shall "identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge."
 - a. Water line flushing;
 - b. Landscape irrigation and irrigation water, excluding run-off from commercial agriculture;
 - c. Diverted stream flows;
 - d. Rising ground waters;
 - e. Uncontaminated ground water infiltration (as defined in 40 CFR §35.2005(20));
 - f. Uncontaminated pumped ground water, **not including construction related dewatering activities**;
 - g. Discharges from potable water sources, including emergency eye wash basins and showers, drinking fountains, and foundation drains;
 - h. Air conditioning condensate;
 - i. Springs;
 - j. Water from crawl space pumps, including discharge from buildings with basements, and crawl space pumps used by utility companies to dewater utility manholes and other maintenance and operating substructure facilities, and footing drains;
 - k. Lawn watering runoff;
 - l. Water from individual residential car washing;
 - m. Water from charity car washes;
 - n. Flows from riparian habitats and wetlands;
 - o. Dechlorinated swimming pool discharges;
 - p. Exterior building wash water (water only);
 - q. Residual street wash water (water only), including wash water from sidewalks, plazas, and driveways, but excluding parking lots;
 - r. Discharges or flows from fire fighting activities; and
 - s. Water from the Japanese, Chinese, and Hawaiian garden water features located within the International Terminal Complex, not including any water feature cleaning effluent.

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3. The Permittee may also develop a list of other similar occasional incidental non-storm water discharges (e.g. non-commercial or charity car washes, etc.) that will not be addressed as illicit discharges. These non-storm water discharges must not be reasonably expected (based on information available to the Permittee) to be significant sources of pollutants to the Small MS4, because of either the nature of the discharges or conditions the Permittee has established for allowing these discharges to the Small MS4 (e.g., a charity car wash with appropriate controls on frequency, proximity to sensitive waterbodies, Best Management Practices (BMPs) on the wash water, etc.). The Permittee shall document in the storm water management program any local controls or conditions placed on the discharges, and include a provision prohibiting any individual non-storm water discharge that is determined to be contributing pollutants to the Small MS4.
4. The discharge of pollutants from storm water runoff from areas of industrial activity shall be reduced using the “**best available technology economically achievable (BAT)**” and the “**best conventional pollution control technology (BCT)**” standards as required by HAR, Chapter 11-55, Section 11-55-15(b)(1) and 40 CFR §125.3.
5. The discharge of pollutants from all other areas of the Permittee’s facility shall be reduced to the “**maximum extent practicable (MEP)**” as required by the Act Section 402(p)(3)(iii) and 40 CFR §122.26(d)(2)(iv).

C. RECEIVING WATER LIMITATIONS

1. The discharge shall comply with the basic water quality criteria which states:

"All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

- (1) Materials that will settle to form objectionable sludge or bottom deposits;
- (2) Floating debris, oil, grease, scum, or other floating materials;
- (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in receiving waters;
- (4) High or low temperatures; biocides; pathogenic organisms; toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;
- (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
- (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands."

2. The discharge shall not cause or contribute to a violation of any of the applicable beneficial uses or water quality objectives contained in HAR, Chapter 11-54, titled "Water Quality Standards."
3. The Permittee shall timely inspect the receiving state waters, effluent, and control measures and BMPs to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in HAR, Chapter 11-54, Section 11-54-4. (e.g., the Permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)
4. The Permittee shall immediately take action to stop, reduce, or modify the discharge of pollutants as needed to stop or prevent a violation of the basic water quality criteria as specified in HAR, Chapter 11-54, Section 11-54-4.

D. STORM WATER MANAGEMENT PROGRAM (SWMP)

The Permittee shall:

1. Continue to implement, update, and enforce the Storm Water Management Program (SWMP) designed to address the requirements of this permit and limit, to the MEP, the discharge of pollutants to and from its Small MS4 to protect water quality and to satisfy the appropriate water quality requirements of the Act. The SWMP shall be updated and modified per the requirements of this permit and shall be submitted to DOH and EPA within one (1) year from the effective date of this permit, or as otherwise specified, and shall fully implement the SWMP upon submittal to DOH and EPA. The Permittee shall continue to implement the existing SWMP until submittal of the revision. The SWMP and any of its revisions, additions, or modifications are enforceable components of this permit.

The SWMP shall include the following information for each of the SWMP components described in Part D.1.a. - D.1.h. below:

- The BMPs, plus underlying rationale, that shall be implemented for each of the program components.
- The measurable standards and milestones for each of the BMPs, plus underlying rationale, including interim measures to aid in determining level of effort and effectiveness of each program component.
- The name or position title and affiliation of the person or persons responsible for implementation or coordination of each program component.
- Monitoring to determine effectiveness of Wasteload Allocation (WLA) controls and of the overall storm water program.

a. Public Education and Outreach

The Permittee shall continue to implement an annual education program for the following Targeted Groups and General Public. The SWMP shall include a written public education plan for how the Permittee will reach all targeted audiences and implement the permit requirements described below.

- (1) *Targeted Groups.* The Permittee shall address the following targeted groups in the public education plan, and shall describe outreach activities and anticipated frequencies that each activity will be conducted over the permit term:
- DOT-AIR employees
 - DOT-AIR consultants
 - DOT-AIR tenants not meeting the definition of industrial activities under 40 CFR §122.26(b)(14)
 - DOT-AIR tenants (industrial facilities) covered by the NPDES permit program
 - Construction Contractors on DOT-AIR property
 - Any other source that the Permittee determines may contribute a significant pollutant load to its Small MS4
- (2) *General Public.* The Permittee shall include in the public education plan the following activities, with anticipated frequencies that each activity will be conducted over the permit term:
- Public Service Announcements (PSAs)
 - Distribution of brochures or fact sheets and alternative information sources with the telephone numbers to use to report illegal discharges to the DOT-AIR Small MS4 (e.g., posters, magnets, stickers, etc.).
 - Participation in special events (e.g., storm drain stenciling programs, community clean-ups, citizen watch groups, and "Adopt-A-Storm Drain" programs) and exhibits.
 - Web site
 - Pesticides, herbicides, and fertilizer use program
 - Training for the Target Group, etc. on pollution prevention BMPs in the SWMP.
 - Forming partnerships with all HNL tenants and the general public to fulfill the requirements of this program.
 - Incorporating public meetings/citizen panels to discuss storm water management policies.
 - Distribute brochures and guidances on a hazardous waste information, awareness, and recycling program to promote awareness of proper disposal and handling of commonly dumped "household type" hazardous waste (e.g., used motor oil, antifreeze, pesticides, and other toxics) within HNL for wastes.
- (3) *Annual Survey.* The Permittee shall evaluate the progress of the public education program by conducting an annual survey of HNL employees

and tenants to measure both behavior and knowledge relating to storm water. The results of the survey, with a comparison to past surveys, as applicable, shall be summarized in the End-of-Year Report.

b. Public Involvement/Participation

The Permittee shall include the public in developing, reviewing, and implementing the SWMP. The draft SWMP shall be made available to the public on the DOT-AIR Website and at local offices. An informational meeting shall be scheduled and announced prior to finalizing the SWMP to solicit comments and answer questions from the public. Other activities to involve the public might include organizing a citizen advisory group to solicit ongoing input from the public about changes to the SWMP and specific SWMP-related projects, or organizing water quality-focused clean-up events to educate the public about storm water impacts from airports.

c. Illicit Discharge Detection and Elimination

(1) Illicit Connection / Illegal Discharge Elimination Program Plan

- (a) *Identification of Illicit Connections and/or Illegal Discharges*** - The Permittee shall revise its SWMP to include procedures for the identification of and response to possible illicit connections and illegal discharges. These procedures shall include, but not be limited to, specific time deadlines for responding to identified discharges.
- (b) *Licenses for private drain connections***. The Permittee shall require a permit or approval for private drain connections and discharges of sheet flow from industrial and/or construction activities to the DOT-AIR Small MS4 and maintain a database of all approved connections and discharges to its Small MS4. The Annual Report shall include a table showing the facilities with permitted connections and/or discharges (via sheet flow from industrial and/or construction activities) to the DOT-AIR Small MS4.
- (c) *Field Screening***. The Permittee shall include a written plan for observing major and minor outfalls to screen for improper discharges. The plan shall designate priority areas for screening, specify the frequency for screening, and identify the procedures to be followed if a discharge is observed. The field screening plan shall be submitted to DOH within one (1) year of the effective date of this permit.

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- (d) *Investigate complaints.* The Permittee shall promptly investigate observed, suspected, or reported illicit flows and pursue enforcement actions, as appropriate. To assist in this effort, within one (1) year of the effective date of this permit, the Permittee shall:
 - (i) Develop a database to identify improper discharge activity by DOT-AIR Property ID Number. The database shall include information about each suspected improper discharge, the Permittee's investigation of that discharge, follow-up activities, and the resolution of each discharge;
 - (ii) Implement a program to facilitate public reporting of illicit discharges (e.g., environmental hotline and/or website for reporting); and
 - (iii) Develop and implement a response plan to be consistent with the requirements in this permit.
- (e) *Enforcement.* The Permittee shall ensure compliance with local ordinances and pursue enforcement actions against property owners with illegal drain connections and persons illegally discharging pollutants to its Small MS4 through remediation and/or removal of the discharge.
- (f) *Prevent and Respond to Spills to the DOT-AIR Small MS4.* The Permittee shall continue to assess the potential for hazardous and other deleterious material spills into the DOT-AIR Small MS4. Based on this assessment, the Permittee shall identify industries, activities, or areas that need to be targeted for spill prevention education. The Permittee shall work with the Aircraft Rescue Fire Fighting (ARFF) Crew and other emergency response teams to provide such education. This program shall be included in the SWMP within one (1) year of the effective date of this permit.

The Permittee shall continue to implement procedures for information sharing between the Permittee, the ARFF Crew and other emergency response teams. The Permittee shall monitor and track all spills to the storm sewer system, with the purpose of identifying problematic (e.g., reoccurring) areas or activities.

The Permittee shall develop and implement a procedure whereby DOH is notified of all wastewater spills or overflows from private laterals and failing septic systems into their Small MS4. The

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Permittee shall prevent, respond to, contain, and clean up wastewater from any such notification.

- (g) *Facilitate Disposal of Used Oil and Toxic Materials.* The Permittee shall implement or continue to implement a program(s) to facilitate the proper management and disposal or recycling of used oil, vehicle fluids, toxic materials, and other household hazardous wastes. Such a program shall include educational activities, public information activities, and identification of collection sites or methods. The program(s) shall be implemented within one (1) year of the effective date of the permit.
- (h) *Tracking* - The Permittee shall maintain a database of illicit connections, illegal discharges, and spills that tracks the type of discharge, responsible party, DOT-AIR response, and resolution of the discharge to the Small MS4.
- (i) *Training* - The Permittee shall develop and provide training within one (1) year of the effective date of this permit, and annually thereafter, to staff on identifying and eliminating illicit connections, illegal discharges, and spills to the Small MS4. This training shall be specific to DOT-AIR activities, policies, and procedures.

d. Construction Site Runoff Control

- (1) *Plan Review and Approval* - The Permittee shall continue to implement procedures for the receipt and consideration of public inquiries, concerns, and information submitted regarding construction activities within HNL property. The Permittee shall:
 - (a) Not allow construction to commence on any contract or in-house permit project unless and until it has verified that the project has received from DOH a Notice of General Permit Coverage (NGPC) under HAR, Chapter 11-55, Appendix C, NPDES General Permit Authorizing the Discharge of Storm Water Associated with Construction Activity (General Construction Activity Storm Water permit) (unless the project will disturb less than one (1) acre of land) and satisfied any other applicable requirements of the NPDES permit program (e.g., an individual NPDES permit);
 - (b) Review Environmental Assessments (EAs) and Environmental Impact Statements (EISs) prepared for new developments or areas of significant redevelopment in the HNL or its vicinity to ensure that storm water pollution reduction measures are included in the

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development or redevelopment. As necessary, implement and update criteria to guide the construction of storm water detention/retention structures or other structural facilities designed to limit storm water pollution.

- (c) Ensure that, prior to issuing a connection or discharge permit requiring coverage under the General Construction Activity Storm Water permit and/or any other applicable requirements of the NPDES permit program, the project operator has provided proof of filing a Notice of Intent (NOI) or NPDES application for permit coverage and that a Construction BMPs Plan has been prepared;
- (d) Review the applicable Site-Specific BMPs Plan to verify that it fully meets all requirements of DOT-AIR's Standard Specifications and/or Special Provisions (SSPs), the General Construction Activity Storm Water permit, and any other requirements under the NPDES permit program, as applicable. The contractor shall implement Site-Specific BMPs to reduce storm water pollution caused by any construction activities within the HNL; and
- (e) Submit a table in the Annual Report showing the name and start date of any construction projects on HNL property which cause land disturbances and/or were covered by an NGPC. If the construction project is covered by an NGPC, also provide the NGPC File number.

Within 180 days of the effective date of this permit, the Permittee shall develop and submit for approval a checklist that its reviewers shall use in evaluating the BMP Plans pursuant to this paragraph. Copies of this checklist shall be provided to applicants for permits and to construction contractors for their use in developing construction BMPs for DOT-AIR-contracted construction projects.

- (2) *Standard Specifications and/or Special Provision Revision* - The Permittee shall revise its SSPs to require use of the current edition of the City's "Best Management Practices Manual for Construction Sites in Honolulu," (City BMP Manual) and the City's "Rules for Soil Erosion Standards and Guidelines," on all contract, in-house, and permit construction projects in Oahu. The Permittee shall incorporate these revised SSPs, either explicitly or by reference, into its revised SWMP.
- (3) *Construction Site BMPs* - The Permittee shall revise the listing and description of Construction Activity BMPs in its SWMP to include, at a minimum, the BMPs as contained and described in the City BMP Manual.

- (4) *Construction BMP Field Manual* - Within 180 days of the effective date of the permit, the Permittee shall develop and submit for approval a Construction BMPs field manual describing various construction storm water BMPs installation and maintenance procedures. The DOT-AIR shall continue to use the existing field checklist during the development of the Construction BMPs field manual. After submittal, the DOT-AIR shall implement the Construction BMPs field manual. After approval, a copy of this Construction BMPs field manual shall be provided to all DOT-AIR field staff involved in construction and/or erosion control projects (contract and/or in-house [e.g., Maintenance Division] permit).
- (5) *Training* - The Permittee shall provide annual training on the Construction BMPs Program Plan to all DOT-AIR staff with construction storm water responsibilities, including construction engineers, maintenance staff, and plan reviewers. This training shall be specific to DOT-AIR activities (including the proper installation and maintenance of approved BMPs), policies, and procedures.
- (6) *Initial Construction Inspections* - Prior to the initiation of ground-disturbing activities at any site, except for activities associated with the installation of BMPs at a site, an engineer or qualified inspector employed or retained by the Permittee who reviews and becomes familiar with the BMPs Plan, shall inspect the site to document whether the BMPs required by the BMPs Plan have been installed correctly and in the correct locations prior to the commencement of ground-disturbing activity.
- (7) *Inspections and Enforcement* - The Permittee shall revise its SWMP to specify mandatory minimum project inspection and enforcement requirements for DOT-AIR inspectors at all construction sites. In addition to inspections required by the General Construction Activity Storm Water permit, and as otherwise required under the NPDES permit program, all in-house and contract construction projects shall be inspected at least monthly by a qualified construction inspector who is independent (e.g., not involved in the day-to-day planning, design, or implementation) of the construction projects to be inspected. The Permittee may use more than one (1) qualified construction inspector for these inspections. The Permittee shall develop and implement a standard inspection form and reporting procedures for use in these inspections. The inspection form shall include, at a minimum, a checklist for the proper installation of BMPs specified in the BMP Plan. The reporting procedures shall include, at a minimum, notification of any deficiencies to the DOH. The Permittee shall further develop and implement written procedures for appropriate

corrective actions and follow-up inspections when an inspected project is not in full compliance with the NPDES permit, the General Construction Activity Storm Water permit, or any other applicable requirements under the NPDES permit program. These enforcement procedures shall be submitted to DOH for review and acceptance within one (1) year of the effective date of this permit.

- e. **Post-Construction Storm Water Management in New Development and Redevelopment**
 - (1) *Develop design criteria* - Within one (1) year of the effective date of this permit, the Permittee shall develop, submit, and implement a Post Construction BMP Manual with specific criteria establishing when permanent post-construction BMPs (e.g., permanent detention/retention structures, etc.) must be included in project design to address storm water impacts and pollutants of concern. These criteria shall take into consideration, among other things, potential water quality impacts anticipated from the permanent post-construction conditions. Permanent post-construction BMPs to be considered shall include those designed to treat storm water runoff and other structural type devices.
 - (2) *Project Design Review* - The Permittee shall not advertise any construction project nor award any construction contract unless and until the project design has been reviewed to ensure that appropriate permanent post-construction BMPs have been included in the project design and are included in the bid package. No project shall proceed without the inclusion of appropriate permanent post-construction BMPs unless there is specific documentation demonstrating that such post-construction BMPs are not practicable. Project documents for projects that will include installation of permanent post-construction BMPs shall also include appropriate requirements for their future continued maintenance.
 - (3) *SWMP Revisions* - The Permittee shall revise its SWMP as applicable to:
 - (a) Require installation and appropriate maintenance of permanent post-construction BMPs, where applicable, on all New Development and Significant Redevelopment projects that the Permittee undertakes.
 - (b) Include the following permanent post-construction BMPs in the SWMP: infiltration basins, infiltration trenches, media filters, Continuous Deflective Separation (CDS) units, and other similar technologies.

- (4) *BMP, Operation and Maintenance, and Inspection Database* - Within two (2) years of the effective date of this permit, the Permittee shall develop and implement a system to compile a database of post-construction BMPs and the frequency of maintenance and inspection of the BMPs. The database shall include both public and private activities or projects which initially discharge into the Permittee's Small MS4 and shall begin in the plan review stage with a database or geographic information system (GIS). Within the permit renewal application, the Permittee shall provide the plan to map the post-construction BMPs on the GIS. In addition to the standard information collected for all projects (e.g., project name, owner, location, start/end date, etc.), the database shall also include, at a minimum:
- Type and number of Source Control BMPs
 - Type and number of Treatment Control BMPs
 - Latitude/Longitude coordinates of controls using Global Positioning Systems (GPS) and NAD83 Datum
 - Photographs of controls
 - Operation and maintenance requirements, including frequency
 - Frequency of inspections
- (5) *Retrofit Feasibility Study* - The Permittee shall complete a feasibility study to retrofit the existing Small MS4 discharging to receiving waters listed pursuant to Section 303(d) of the Act for either sediment, siltation, turbidity, and/or trash. The retrofits may include water quality BMPs to meet State Water Quality Standards. A detailed scope of the feasibility study shall be submitted to DOH within one (1) year of the effective date of this permit. A final feasibility study shall be submitted to DOH within three (3) years of the effective date of this permit. The Permittee shall work with the Army Corps of Engineers, as necessary, to improve the storm water quality features of flood control structures and the DOT-AIR Small MS4.
- (6) *Education and Training*
- (a) *Project Proponents*. Within one (1) year of the effective date of this permit, the Permittee shall provide education and outreach material for those parties who apply for DOT-AIR permit (e.g., developers, engineers, architects, consultants, construction contractors, excavators, and property owners) on the selection, design, installation, operation and maintenance of storm water treatment controls. The outreach material may include a simplified flowchart

for thresholds triggering permits and requirements, a list of required permits, implementing agencies, fees, overviews, timelines and a brief discussion of potential environmental impacts associated with storm water runoff.

- (b) The Permittee shall provide annual training to all DOT-AIR staff with project design and construction storm water responsibilities, including design engineers, construction engineers, and plan review staff, specific to DOT-AIR activities, policies, and procedures and shall include training on the DOT-AIR Post Construction BMP Manual.

f. **Pollution Prevention/Good Housekeeping**

(1) **Debris Control BMPs Program Plan**

- (a) *Inspection/Maintenance Schedule* - The Permittee shall revise its SWMP to include procedures and a schedule for inspections of the following:
 - (i) Storm drainage system catch basins, gutters and open ditches, trenches, and storm drains for the purpose of identifying if cleaning of such structures is needed. Inspections, maintenance and cleaning shall be done as necessary and at least twice per year. Maintenance logs shall include the date, quantity and type of debris the contractor removed from the vicinity of the surface water booms. Inspection logs shall include the date, identification number, and inspection results of storm drain nodes and absorbent booms. Maintenance logs shall include the date, quantity and type of debris the contractor removed from Keehi Lagoon near the Aircraft Rescue Fire Fighting Station.
 - (ii) Storm water retention basins. Inspections shall be done annually and maintenance shall be performed semi-annually. At a minimum, one inspection shall be performed before November 1st of each year.
 - (iii) Runways/taxiways, major streets, and streets in the industrial and commercial areas for sweeping and litter pickup as specified in the SWMP or at least twice per month. Indicate how and where the sweepings are disposed.

- (iv) Roads for repairs as specified in the SWMP.

The Annual Report shall include a table showing the date, quantity and type of swept material, identification of swept runway/taxiway and street sweeping, and reports of road inspection problems and/or repairs.

- (b) *Storm Drain Mapping* - The Permittee shall update, as necessary, the mapping of its Small MS4 including outfalls, storm drain pipes, open channels, storm drainage features, and facilities.
- (c) *Asset Management System* - The Permittee shall continue to maintain a comprehensive asset management system of the DOT-AIR Small MS4 and related appurtenances including maintenance equipment, to ensure appropriate debris removal and system maintenance. The asset management system shall, at a minimum, include identification of the number and location of all drain inlets and outfalls. The Permittee shall use this asset management system to establish priorities and to schedule and track efforts of appropriate system maintenance and debris removal program activities such as street sweeping, catch basin cleaning, and green waste and accumulated soil removal. The asset management system shall include justification of its priorities on the basis of potential impacts to water quality.
- (d) *Storm Drain Placards* - The Permittee shall revise its SWMP to develop procedures and a schedule to install and maintain storm drain placards. Priority shall be given to the Permittee's industrial and commercial areas and areas with pedestrian traffic. The Permittee shall develop a system to track placement of placards and procedures for maintenance staff to inspect placards during routine maintenance activities.
- (2) Chemical Applications BMPs Program Plan
- (a) *Training* - The Permittee shall develop and implement a specific training program for all potential applicers (bulk and hand-held) of fertilizers, pesticides, and herbicides in the proper application of these substances. The Permittee shall not permit the application of fertilizers, pesticides, or herbicides unless the applicer has first received this training.

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- (b) *Implement appropriate requirements for pesticide, herbicide, and fertilizer applications.* The Permittee shall revise its SWMP and implement BMPs to reduce the contribution of pollutants associated with the application, storage, and disposal of pesticides, herbicides, and fertilizers from municipal areas and activities to its Small MS4 within one (1) year of the effective date of this permit. Municipal areas and activities include, at a minimum, municipal facilities, public right-of-ways, and landscaped areas.

Such BMPs shall include, at a minimum: (1) educational activities, permits, certifications and other measures for municipal applicators; (2) integrated pest management measures that rely on non-chemical solutions; (3) the use of native vegetation; (4) chemical application, as needed; and (5) the collection and proper disposal of unused pesticides, herbicides, and fertilizers.

The Permittee shall ensure that their employees or contractors or employees of contractors applying registered pesticides, herbicides, and fertilizers shall work under the direction of a certified applicator, follow the pesticide label, and comply with the State requirements. All Permittee employees or contractors applying pesticides, herbicides or fertilizers shall receive training on the BMPs annually.

- (c) The Permittee shall continue to evaluate the extent and magnitude of fertilizer and pesticide runoff, including golf courses, into the DOT-AIR Small MS4, especially those parts of the system that discharge to the Mamala Bay and Keehi Lagoon. If significant sources are identified, the Permittee shall develop and implement control measures for these sources.
- (d) The Annual Report shall include a table showing date, quantity of pesticide/herbicide/fertilizer, application location, and applicable BMPs used during the application.
- (3) **Maintenance Facilities BMPs Program Plan**
- (a) *Vehicle Baseyard Plans* - For each maintenance baseyard, the Permittee shall continue to implement and update a site-specific Storm Water Pollution Control Plan (SWPCP) (formerly known as BMPs) to minimize the discharge of pollutants in storm water runoff

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and to maintain compliance with conditions of this permit. An individual at each facility (e.g., yard foreman) shall be charged with ensuring implementation of the SWPCP. This individual shall be trained to conduct inspections and identify areas for BMPs improvement. To ensure consistency and provide assistance and oversight, the Permittee shall identify an individual, also trained to conduct inspections and identify areas for BMPs improvement and independent of any specific baseyard, who shall conduct inspections of all baseyards at least quarterly. The Permittee shall submit the updated site-specific SWPCP for each maintenance baseyard within 180 days of the effective date of this permit. The SWPCP shall include:

- (i) A detailed site plan
 - (ii) Site description
 - (iii) Facility layout
 - (iv) Pollutants potentially present in storm water
 - (v) Pollutant sources (including but not limited to the identification of non-storm water sources connected to the storm drainage system)
 - (vi) Storm water outfalls and monitoring points in the Storm Water Monitoring Plan
 - (vii) Monitoring procedures in the Storm Water Monitoring Plan
 - (viii) Maintenance BMPs
 - (ix) Inspection procedures
 - (x) Spill prevention and response procedures
 - (xi) Rules and regulations to prevent the discharge of pollutants into the DOT-AIR Small MS4.
- (b) *Maintenance BMPs* - The Permittee shall develop and implement a written set of maintenance BMPs for routine and emergency in-house activities within 90 days of the effective date of this permit. Activity specific BMPs shall be organized as a manual and be created in a format that facilitates its use by field staff (e.g., field friendly). It shall be distributed to all field staff and shall complement the overall goals of the SWMP. The Annual Report shall include records showing the implementation and/or maintenance of the BMPs, the effectiveness of the BMPs and how the effectiveness of the BMPs is determined.

- (c) *Training* - The Permittee shall develop and implement a formal storm water awareness training program for HNL Maintenance Facility supervisors and staff that identifies potential sources of pollution, general BMPs that can be used to reduce and/or eliminate such sources, and specific BMPs for their facilities and activities. The training program shall identify why certain BMPs included in the training document tables are not applicable to the facilities and activities. The training shall incorporate components of the public education campaign and educate staff that they serve a role in protecting water quality. Maintenance supervisors and staff shall be made aware of the NPDES permit, the overall SWMP, the SWPCP for their baseyard, and the applicable BMPs Program(s). The training shall be developed and submitted to DOH for review and acceptance within two (2) years of the effective date of this permit. Permittee maintenance staff shall receive training within three (3) years of the effective date of this permit, and annually thereafter.

g. **Industrial and Commercial Activities Discharge Management Program**

The Permittee shall develop and implement an industrial and commercial discharge management program to reduce to the MEP the discharge of pollutants from all industrial and commercial facilities and activities which initially discharge into the Permittee's Small MS4. At a minimum, the program shall include:

- (1) *Inventory and Map of Industrial Facilities and Activities*. The Permittee shall update and submit, in electronic and paper format, the industrial facilities and activities inventory (industrial inventory), sorted by HNL Property ID Number, and map of such facilities and activities discharging, directly or indirectly, to its Small MS4 within the 4th End-of-Year Report (also known as the permit renewal application).

The industrial inventory shall include the facility name, street address, TMK or HNL Property ID Number, nature of business or activity, Standard Industrial Classification (SIC) code(s) that best reflect the facility product or service, principal storm water contact, receiving State water, and whether a Notice of General Permit Coverage (NGPC) under HAR, Chapter 11-55, Appendix B, NPDES General Permit Authorizing the Discharge of Storm Water Associated with Industrial Activities (General Industrial Storm Water permit) or NPDES Conditional "No Exposure" Exclusion or any other applicable NPDES permit has been

obtained, including an NPDES Permit or NGPC File Number, issuance date, expiration date, and administrative extension date.

- (2) *Inventory and Map of Commercial Facilities and Activities.* The Permittee shall update and submit, in electronic and paper format, the commercial facilities and activities inventory (commercial inventory), sorted by priority areas, and map of such facilities and activities discharging, directly or indirectly, to its Small MS4 within the permit renewal application.

The commercial inventory shall include, by priority area, the facility name, street address, TMK or HNL Property ID Number, nature of business or activity, SIC code(s) that best reflect the facility product(s) or service(s), principal storm water contact, and receiving State water.

At a minimum, the commercial inventory shall include facilities and activities such as:

- ◆ Findings from follow-up investigations of the commercial facilities identified in the Questionnaire Survey
- ◆ Retail Gasoline Outlets
- ◆ Retail Automotive Services, including Repair Facilities
- ◆ Restaurants
- ◆ Any other commercial facility that either the Permittee or DOH determines is contributing pollutants to the DOT-AIR Small MS4 that may cause or contribute to an exceedance of State water quality standards.

- (3) *Survey of Industrial and Commercial Facilities and Activities*

The Permittee shall distribute an annual environmental survey of all industrial facilities for the following, as applicable: above ground storage tanks, mobile storage tanks, underground storage tanks (active or closed), mobile solvent recovery sites, spill response materials/kits locations, drum storage sites, paint booth sites, hazardous materials storage sites, vehicle wash sites, oil/water separators, aircraft/vehicle maintenance, waste storage area (which includes sub categories of drums, batteries, and solvent recovery systems), pre-treatment units (oil/water separators, and retention basins), hazardous material storage sites (includes sub categories of drums, cases, etc.), etc.

At the end of each permit year (using the annual environmental survey which is completed by each of the industrial facilities), the list of tenants

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and activities shall be reviewed and evaluated for possible additions or changes in the monitoring points. The Annual Report shall include:

- (a) A table which shows the year of closure of the "Closed Underground Storage Tanks;"
 - (b) Figure(s) (plan view) showing the locations where mobile storage tanks are used or stored;
 - (c) A table showing the quantity of hazardous material storage and whether the quantity for each specific substance is considered to be "extreme;"
 - (d) Figure(s) and a table showing the location of all DOT-AIR spill response kits;
 - (e) The size of the contained area of the paint booth and the type of paint booth for the facilities in Drainage Basin A, B, and D; and
 - (f) List of Tenants with the correct SIC Code (for primary and other industrial activities) and the year of the inspection.
- (4) *Storm Water Pollution Control Plan (SWPCP)*. The Permittee shall develop, maintain, and provide a SWPCP to all HNL tenants conducting industrial activities (especially commercial tenants such as car rental agencies) which are covered by this permit and having discharges composed entirely of storm water for their implementation within 30 days after the effective date of this permit.

The Permittee shall continue to implement and enforce the SWPCPs for Tenant-Owned industrial facilities involved in vehicle or equipment maintenance, vehicle or equipment fueling, chemical storage, recycling, refuse transfer stations, or convenience centers. The SWPCP shall identify:

- (a) Pollutants potentially present in storm water;
- (b) Pollutant sources (including but not limited to the identification of non-storm water sources connected to the storm drainage system);
- (c) DOT-AIR Small MS4 connection permits and sewer connection and pretreatment permits;

- (d) Storm water outfalls and monitoring points in the Monitoring Plan;
- (e) Monitoring procedures in the Monitoring Plan;
- (f) Pollutant control procedures;
- (g) Spill prevention and response procedures;
- (h) Site-specific BMPs developed for facilities (e.g., maintenance of facility and surrounding area(s), proper disposal of oil and grease, application of pesticides by certified applicator); and
- (i) Rules and regulations to prevent the discharge of pollutants into the DOT-AIR Small MS4.

The Permittee shall identify, maintain, and provide a list of Site-specific Best Management Practices (BMPs) to all HNL tenants who do not meet the Standard Industrial Classification (SIC) Codes as defined in 40 CFR §122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi) within 30 days after the effective date of this permit. BMPs may include placement of drip pans or absorbent material under equipment, as required, in order to limit leakage and spills to street surfaces.

(5) *Inspection of Industrial and Commercial Facilities and Activities*

The industrial/commercial inspection program shall be updated to reflect that all industrial and commercial facilities and activities identified in the industrial and commercial inventories required under Parts D.1.g.(1) and D.1.g.(2) are inspected according to the schedule below. Inspectors shall determine compliance with local ordinances and the terms of this permit. If DOH inspects a facility for compliance with the General Industrial Storm Water permit coverage or any other applicable NPDES permit, then the Permittee does not need to inspect the facility that year.

All industrial facilities shall be inspected in accordance with the "NPDES Inspection and Enforcement Manual," dated April 2006, by the DOT-AIR Environmental Program or applicable portions of the "NPDES Compliance Inspection Manual" (EPA 300-B-9-014), dated September 1994, whichever is more stringent. The Permittee shall send the inspection report(s) to the DOH within two (2) months of the inspection date. The Permittee shall also inspect commercial facilities to

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ensure compliance with local ordinances and the terms of this permit. The Permittee shall conduct, at a minimum, the following number of industrial and commercial inspections each year:

Permit Year	Number of Inspections
1	10
2	20
3	30
4	40
5	50

If the Permittee inspects all industrial and/or commercial facilities before completing the minimum number of inspections that year, the Permittee shall begin inspections in the next area scheduled for inspections. Each industrial facility that does not have NPDES permit coverage under the NPDES permit program shall be inspected at least annually, and each industrial facility that does have such NPDES permit coverage is inspected at least once during the term of this permit. Commercial dischargers with a high risk of discharge of contaminated runoff to the DOT-AIR Small MS4 shall be inspected at least annually.

Inspections must consist of a review of implementation of BMPs for compliance with local ordinances and this permit to assess potential impacts to receiving waters. Inspections shall also assess potential sources of pollutants to the DOT-AIR Small MS4 and require controls to prevent discharge of pollutants to the DOT-AIR Small MS4.

Inspectors shall be trained to identify deficiencies, assess potential impacts to receiving waters, and evaluate the appropriateness and effectiveness of deployed BMPs and SWPCPs, if applicable.

The inspectors shall use an inspection checklist, or equivalent, and photographs to document site conditions and BMP conditions.

Records of all inspections shall be maintained for a minimum of five (5) years, or as otherwise indicated.

- (6) *Enforcement Policy for Industrial Facilities and Activities.* The Permittee shall develop and submit an enforcement policy that shall go into effect when it has been documented that an industrial or commercial facility has

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failed to comply with local ordinances and/or terms of this permit. This policy shall be submitted to DOH for review and acceptance within 180 days of the effective date of this permit. The policy shall be part of the overall escalating enforcement policy and must consist of the following:

- ◆ Issuance of written documentation to a facility representative within two (2) weeks of storm water deficiencies identified during inspection. Documentation must include copies of all field notes, correspondence, photographs, and sampling results if applicable.
- ◆ A timeline for correction of the deficiencies.
- ◆ Provisions for re-inspection and potential enforcement actions, if necessary.

The Permittee shall submit a table in the Annual Report showing the date, facility and reason for the verbal warning(s) and/or written Notice of Violation(s).

In the event the Permittee has exhausted all available sanctions and cannot bring a facility or activity into compliance with local ordinances and this permit, or otherwise deems the facility or activity an immediate and significant threat to water quality, the Permittee shall provide oral notification to DOH within one (1) week of such determination. Oral notification shall be followed by a copy of all inspection checklists, notes, photographs, and related correspondence within two (2) weeks of the determination. In instances where an inspector identifies a facility that has not applied for the General Industrial Storm Water permit coverage or any other applicable NPDES permit, the Permittee shall provide oral notification to DOH within one (1) week of such determination. Such oral notification shall be followed by written notification within two (2) weeks of the determination.

- (7) *Training.* The Permittee shall develop and provide training to staff on how to conduct industrial and commercial inspections, the types of facilities covered by the General Industrial Storm Water permit coverage or any other applicable NPDES permit, components in a SWPCP for industrial facilities, BMPs and source control measures for industrial and commercial facilities, and inspection and enforcement techniques. This training shall be specific to DOT-AIR activities, policies, and procedures. The training shall be developed and submitted to DOH for review and acceptance within 90 days of the effective date of this permit. Permittee inspectors shall receive training within 180 days of the effective date of this permit, and annually thereafter.

h. Hydrocarbon Removal and Remediation Plan

The Permittee shall continue to monitor the depth of the fuel plume and shall notify the DOH at least 180 days before any construction which requires remediation of the contaminated soil or construction dewatering activities. The DOH reserves the right to include treatment protocols for these activities when they occur. Modification of the permit to include these treatment protocols shall be considered a minor modification for the purposes of 40 CFR Part 124.

2. Revise the SWMP, as necessary, if any discharge limitation or water quality standard established in HAR, Chapter 11-54, Section 11-54-4 is exceeded. The revisions shall include BMPs and/or other measures to reduce the amount of pollutants found to be in exceedance from entering State Waters.
3. Properly address all modifications, concerns, requests, and/or comments to the satisfaction of the DOH and/or EPA.
 - a. **SWMP Modifications.** The storm water pollution control activities and compliance dates described in the SWMP may need to be modified, revised, or amended from time to time over the life of the permit to respond to changed conditions and to incorporate more effective approaches to pollutant control. Minor changes may be proposed by the Permittee or requested by the the Director or the Regional Administrator. Proposed changes that imply a major reduction in the overall scope and/or level of effort of the SWMP must be made for cause and in compliance with 40 CFR §122.62 and Part 124. A written report shall be submitted to the Director for approval at least 30 days prior to the initiation date of the major modification. The Permittee shall report and justify all other modifications made to the SWMP in the End-of-Year Report for the year in which the modification was made.
 - b. **System Modifications** include any planned physical alterations or additions to the permitted Small MS4, any changes to the quality and quantity of discharge, and any existing outfalls newly identified over the term of the permit, and any new drainage system or additions to the existing system that will discharge into a "Class 2, Inland Water" or "Class A, Marine Water," as defined in HAR, Chapter 11-54. All alterations and/or additions to the DOT-AIR Small MS4 shall be indicated in the End-of-Year Report. Major alterations and/or additions shall be identified by letter within 30 days of the completion of the alteration and/or addition. New storm sewer systems or additions to the existing storm sewer system shall be reported to the Director for approval before any discharges occur.

E. MONITORING REQUIREMENTS

1. Monitoring Plan

- a. The Permittee shall revise and submit the Monitoring Plan to the Director within 180 days of the effective date of this permit for review and approval. The Monitoring Plan shall be implemented over the term of the permit and shall, at a minimum, include the following items:
- (1) Written narrative of the proposed monitoring plan's objectives and description of activities;
 - (2) The monitoring locations on a sampling location map with an explanation of why the location was selected and the identification of the pollutants of concern for each of the sampling locations;
- (a) Small MS4 monitoring locations shall be as follows:

Monitoring Location	Location Description
Airport Storm Drain (SD) 9572	Environmental Asset (EA) 100 - oil water separator manhole south side of Aokea Place
SD 9573	EA 101 - open box culvert northwest of Taxiway A & L
SD 9328	EA 102 - storm water inlet AIR-O Baseyard
SD 7308	EA 105 - storm water inlet south of fence at north end of Kaulele Street
SD 4283	Koi Pond - garden water features located within Overseas Terminal Complex

- (b) Tenant-Owned Industrial Facility monitoring locations shall be as follows:

Monitoring Location	Facility Description
SD 9572 & 9573	EA 100 & 101 - Aloha Airlines
SD 6875	Continental Airlines, Inc. (Continental Micronesia, Chelsea Catering)
SD 7603	Delta Air Lines Gates and Aircraft Maintenance Area

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Monitoring Location	Facility Description
SD 9572	EA 100 - Hawaiian Airlines Maintenance Hanger Area
ditch north of facility near SD 4502	Northwest Airlines, Inc.
Discharge Point 001 near SD 4724	United Parcel Service

- (3) The monitoring frequency;
- (4) Visual inspection of physical objects and solid wastes;
- (5) Rainfall depth, duration, location, and storm event return time;
- (6) Written documentation of the following:
 - (a) Type, frequency, and location of data gathered on levels of pollutants in non-storm water discharges to the Small MS4;
 - (b) Characteristics (timing, duration, intensity, total rainfall) of the storm event(s);
 - (c) Parameters for measured pollutant loads; and
 - (d) Range of discharge volumes to be monitored, as well as the timing, frequency, and duration at which they are identified;
- (7) Monitoring of the following parameters
 - (a) For Small MS4

Parameter (units)	Discharge Limitation {1}	Minimum Monitoring Frequency	Type of Sample {2}
Flow (GPD)	{3}	{4}	Calculated or Estimated
Biochemical Oxygen Demand (5-Day) (mg/l)	{3}	{4}	Composite {5}
Chemical Oxygen Demand (mg/l)	{3}	{4}	Composite {5}
Total Suspended Solids (mg/l)	{3}	{4}	Composite {5}
Total Phosphorus (mg/l)	{3}	{4}	Composite {5}

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Parameter (units)	Discharge Limitation {1}	Minimum Monitoring Frequency	Type of Sample {2}
Total Nitrogen (mg/l) {6}	{3}	{4}	Composite {5}
Nitrate + Nitrite Nitrogen (mg/l)	{3}	{4}	Composite {5}
Total Dissolved Solids (mg/l)	{3}	{4}	Grab
Ammonia Nitrogen (mg/l) {7}	{3}	Quarterly	Grab
Chlorophyll a (µg/l) {7}	{3}	Quarterly	Grab
Fecal Coliform or Enterococcus (no./100 ml) {7}, {8}	{9}	Quarterly	Grab
Turbidity (N.T.U.) {7}	5.0* / 2.0** {10}	Quarterly	Grab
Oil and Grease (mg/l)	15	Annually	Grab {11}
pH (Standard Units)	{12}	{4}	Grab {13}
Toxic Pollutants (µg/l) {14}	{15}	{4}	{16}

GPD = gallons per day
mg/l = milligrams per liter = 1000 micrograms per liter
µg/l = micrograms per liter
no./100 ml = number per 100 milliliters
N.T.U. = Nephelometric Turbidity Units
* = Wet season - November 1 through April 30
** = Dry season - May 1 through October 31

NOTES:

- {1} Pollutant concentration levels shall not exceed the discharge limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those discharge limits or are outside those ranges shall be reported to the Director as required in Section 16.f. of the Standard NPDES Permit Conditions within 30 days after the Permittee becomes aware of the results. The Permittee shall provide the DOH with an explanation of the pollutant origin. Monitoring results shall be submitted on the DMR Form. This requirement shall supersede the immediate reporting requirement in the Standard NPDES Permit Conditions for these limitations only.
- {2} The Permittee shall collect samples for analysis from a discharge resulting from a representative storm. A representative storm means a rainfall that accumulates more than 0.1 inch of rain and occurs at least 72 hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Grab sample" means a sample collected during the first 15 minutes of the discharge.

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"Composite sample" means a combination of at least two (2) sample aliquots, collected at periodic intervals. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the flow at the time of sampling or the total flow since the collection of the previous aliquot. The Permittee may collect aliquots manually or automatically.

Samples for analysis shall be collected during the first 15 minutes of the discharge and at 15-minute intervals thereafter for the duration of the discharge, as applicable. If the discharge lasts for over an hour, sample collection may cease.

- {3} No limitation at this time. Only monitoring and reporting is required.
- {4} The discharge from the Japanese, Chinese, and Hawaiian garden water features located within the International Terminal Complex to the Manuwai Canal shall be monitored once per calendar quarter. The other discharges shall be monitored once per calendar year.
- {5} If the duration of the discharge event is less than 30 minutes, the sample collected during the first 15 minutes of the discharge shall be analyzed as a grab sample and reported toward the fulfillment of this composite sample specification. If the duration of the discharge event is greater than 30 minutes, the Permittee shall analyze two (2) or more sample aliquots as a composite sample.
- {6} The Total Nitrogen parameter is a measure of all nitrogen compounds in the sample (nitrate, nitrite, ammonia, dissolved organic nitrogen, and organic matter present as particulates).
- {7} Only the discharge from the Japanese, Chinese, and Hawaiian garden water features located within the International Terminal Complex to the Manuwai Canal shall be monitored.
- {8} Applicable if potentially present in the discharge.
- {9} Effluent limitation is the specific criteria established in HAR, Chapter 11-54, Section 11-54-8 for the classification of the receiving state waters, as applicable.
- {10} Limitation refers to the geometric mean not to exceed the given value.
- {11} The Permittee shall measure Oil and Grease using EPA Method 1664, Revision A.
- {12} For discharge into Class 2, Inland Waters, the pH shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 5.5 nor higher than 8.0. For discharge into Class A, Marine Waters, the pH shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

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- {13} The Permittee shall measure pH within 15 minutes of obtaining the grab sample.
- {14} Toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in HAR, Chapter 11-54, Section 11-54-4, need only be analyzed if they are identified as potential pollutants requiring monitoring in the SWPCP. The Permittee shall test for the total recoverable portion of all metals. If monitoring results indicate that the discharge limitation was equaled or exceeded, the SWPCP shall be amended to include additional BMPs targeted to reduce the parameter which was in excess of the discharge limitation.
- {15} Effluent limitations are the acute water quality standards established in HAR, Chapter 11-54, Section 11-54-4. For pollutants which do not have established acute water quality standards, any detected concentration greater than 0.01 mg/l shall be reported.
- {16} Cyanide and the volatile fraction of the toxic organic compounds shall be sampled by grab sample. All other pollutants, as identified in Appendix D of the 40 CFR Part 122 or in HAR Chapter 11-54, Section 11-54-4 shall be sampled by composite sample.

(b) For Tenant-Owned Industrial Activities

Parameter	Discharge Limitation {1}	Minimum Monitoring Frequency	Type of Sample {2}
Flow (GPD)	{3}	{4}	Calculated or Estimated
Biochemical Oxygen Demand (5-Day) (mg/l)	{3}	{4}	Composite {5}
Chemical Oxygen Demand (mg/l)	{3}	{4}	Composite {5}
Total Suspended Solids (mg/l)	{3}	{4}	Composite {5}
Total Phosphorus (mg/l)	{3}	{4}	Composite {5}
Total Nitrogen (mg/l) {6}	{3}	{4}	Composite {5}
Nitrate + Nitrite Nitrogen (mg/l)	{3}	{4}	Composite {5}
Oil and Grease (mg/l)	15	{4}	Grab {7}
pH (Standard Units)	{8}	{4}	Grab {9}
Aluminum (µg/l) {10}	{5}	{4}	Composite {5}
Cadmium (µg/l) {10}	43	{4}	Composite {5}

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Parameter	Discharge Limitation {1}	Minimum Monitoring Frequency	Type of Sample {2}
Chromium (VI) (µg/l) {10}	1,100	{4}	Composite {5}
Copper (µg/l) {10}	2.9	{4}	Composite {5}
Lead (µg/l) {10}	140	{4}	Composite {5}
Nickel (µg/l) {10}	75	{4}	Composite {5}
Silver (µg/l) {10}	2.3	{4}	Composite {5}
Zinc (µg/l) {10}	95	{4}	Composite {5}
Benzene (µg/l)	1,700	{4}	Composite {5}

GPD = gallons per day
mg/l = milligrams per liter = 1000 micrograms per liter
µg/l = micrograms per liter

NOTES:

{1} Pollutant concentration levels shall not exceed the discharge limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those discharge limits or are outside those ranges shall be reported to the Director as required in Section 16.f. of the Standard NPDES Permit Conditions within 30 days after the Permittee becomes aware of the results. The Permittee shall provide the DOH with an explanation of the pollutant origin. Monitoring results shall be submitted on the DMR Form. This requirement shall supersede the immediate reporting requirement in the Standard NPDES Permit Conditions for these limitations only.

{2} The Permittee shall collect samples for analysis from a discharge resulting from a representative storm. A representative storm means a rainfall that accumulates more than 0.1 inch of rain and occurs at least 72 hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Grab sample" means a sample collected during the first 15 minutes of the discharge.

"Composite sample" means a combination of at least two (2) sample aliquots, collected at periodic intervals. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the flow at the time of sampling or the total flow since the collection of the previous aliquot. The Permittee may collect aliquots manually or automatically.

Samples for analysis shall be collected during the first 15 minutes of the discharge and at 15-minute intervals thereafter for the duration of the discharge, as applicable. If the discharge lasts for over an hour, sample collection may cease.

{3} No limitation at this time. Only monitoring and reporting is required.

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- {4} Each monitoring location shall be monitored at least once during the term of this permit.
 - {5} If the duration of the discharge event is less than 30 minutes, the sample collected during the first 15 minutes of the discharge shall be analyzed as a grab sample and reported toward the fulfillment of this composite sample specification. If the duration of the discharge event is greater than 30 minutes, the Permittee shall analyze two (2) or more sample aliquots as a composite sample.
 - {6} The Total Nitrogen parameter is a measure of all nitrogen compounds in the sample (nitrate, nitrite, ammonia, dissolved organic nitrogen, and organic matter present as particulates).
 - {7} The Permittee shall measure Oil and Grease using EPA Method 1664, Revision A.
 - {8} For discharge into Class 2, Inland Waters, the pH shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 5.5 nor higher than 8.0. For discharge into Class A, Marine Waters, the pH shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.
 - {9} The Permittee shall measure pH within 15 minutes of obtaining the grab sample.
 - {10} The Permittee shall test for the total recoverable portion of all metals. If monitoring results indicate that the discharge limitation was equaled or exceeded, the SWPCP shall be amended to include additional BMPs targeted to reduce the parameter which was in excess of the discharge limitation.
- (8) Written documentation of the analytical methods to be used;
- (a) Sample holding time;
 - (b) Preservation techniques; and
 - (c) Test method and method detection level:
 - (i) Conduct monitoring in accordance with test procedures approved under 40 CFR Part 136, or unless otherwise specified, with detection limits low enough to measure compliance with the discharge limitations specified in Part E.1.b.(7) of this permit. For cases where the discharge limitation is below the lowest detection limit of

the appropriate test procedure, the Permittee shall use the test method with the lowest detection limit.

- (ii) If a test method has not been promulgated for a particular constituent, the Permittee may use any suitable method for measuring the level of the constituent in the discharge provided the Permittee complies with 40 CFR Part 136.4 - Application for alternate test procedures.
 - (9) Written documentation of the Quality Assurance/Quality Control procedures to be used;
 - (10) Data gathered on levels of pollutants in non-storm water discharges to the DOT-AIR Small MS4;
 - (11) Using rainfall data collected by the Permittee, the Permittee shall relate rainfall events, measured pollutant loads, and discharge volumes from the DOT-AIR Small MS4; and
 - (12) Estimated budget to be implemented for the term of the permit.
 - b. The Director may specify other discharge parameters, monitoring requirements and limitations, in addition to the monitoring requirements specified.
 - c. The DMRs for Aloha Airlines; Continental Airlines, Inc. (Continental Micronesia, Chelsea Catering); Delta Air Lines Gates and Aircraft Maintenance Area; Hawaiian Airlines Maintenance Hanger Area; Northwest Airlines, Inc.; and United Parcel Service shall be submitted for Calendar Year 2005 within 30 days of the effective date of this permit.
2. Other WLAs

As additional WLAs are adopted by DOH that identify the Permittee as a source, the Permittee shall develop implementation and monitoring plans for a minimum of one (1) additional WLA per year within one (1) year of the adoption date.

F: REPORTING REQUIREMENTS

1. End-of-Year Reports

- a. The Permittee shall submit a detailed evaluation of all storm water control measures implemented during the past fiscal year. The Permittee shall submit the End-of-Year Report by August 31st of each year.
- b. The Permittee shall revise its SWMP to include a description of reporting procedures and activities, including schedules and proposed content of reports such that, at a minimum, the following is reported for each storm water program component in each report:
 - (1) *Requirements* - Describe what the Permittee was required to do (describe status of compliance with conditions of this permit and other commitments set forth in the SWMP).
 - (2) *Past Activities* - Describe activities over the reporting period in comparison to the requirements, including, where applicable, progress accomplished toward meeting specific measurable goals, standards and milestones or other specific performance requirements (e.g., an updated tenant list, SIC list, and issued connection permit list, as well as the survey/inspection results and any noncompliance documentation; a list of construction plans reviewed and construction site investigations, report assessments of the need for permanent detention/retention structures, the status of the development and implementation of review criteria, and road construction BMPs; a report on inspections and maintenance, a report on activities and specific BMPs utilized by the Permittee and its tenants not meeting the definition of industrial activities under 40 CFR §122.26(b)(14); a report on the permits/approvals issued for connection to the DOT-AIR Small MS4, denials of requests for connection, and illicit discharges cited and removed throughout the year; the number of outfalls screened, any complaints received and corrected, and the number and location of dye or smoke tests conducted; and Annual Monitoring Report as required in Part F.2. of this permit). When requirements were not fully met, include a detailed explanation as to why the Permittee did not meet its commitments for the reporting period. Also describe an assessment of the SWMP, including progress towards implementing each of the SWMP program components.

- (3) *Future Activities* - Describe planned activities, including, where applicable, specific activities to be undertaken during the next reporting period toward accomplishing specific measurable goals, standards and milestones or other specific performance requirements.
 - (4) *Resources* - Report on the status of the Permittee's resource base for implementing this NPDES permit during the applicable reporting period and an estimate of the resources over and above those required in the current reporting period that will be required in the next reporting period. The report shall include the breakdown of monetary resources required in the past and next reporting periods for each of the SWMP components.
- c. *Modifications.* In each report, the Permittee shall describe any modifications made to the SWMP and implementation schedule during the past year, including justifications. The Permittee shall also describe major modifications made to the Permittee's Small MS4, including, but not limited to, addition and removal of outfalls, drainage lines, and treatment facilities.
 - d. *Program Effectiveness Reporting.* Within one (1) year of the effective date of the permit, the Permittee shall submit to DOH a written strategy for determining effectiveness of its SWMP. The strategy shall include water quality monitoring efforts as well as program implementation information and other indicators. The Permittee shall include an assessment of program effectiveness and identification of water quality improvements or degradation beginning with the second End-of-Year Report.
2. Annual Monitoring Report

The Annual Monitoring Report shall cover the past fiscal year and shall, at a minimum, include the following items:

- a. Written narrative of the past fiscal year's activities, including a description of objectives, activities, and coordination with other agencies;
- b. A summary and analysis of monitoring data, submitted on the Discharge Monitoring Report (DMR) Form(s) with the same units as used in Part E.1.a.(7);
- c. An explanation of the pollutant origin, as applicable;
- d. A narrative evaluation addressing the need, if any, for additional or different monitoring points;

- e. A monitoring plan to be implemented over the coming fiscal year. The plan shall, at a minimum, include the items listed in Part E.1.a.
 - f. Report on any allowable emergency non-storm water discharges for the past fiscal year;
 - g. Data gathered on levels of pollutants in non-storm water discharges to the DOT-AIR Small MS4; and
 - h. Using rainfall data collected by the Permittee, the Permittee shall relate rainfall events, measured pollutant loads, and discharge volumes from the DOT-AIR Small MS4.
3. Memorandum of Understanding (MOU) - Roles, Responsibilities, and Legal Authority of DOT-AIR

DOT-AIR shall continue to maintain and comply with the "Memorandum of Understanding Between the Department of Transportation, State of Hawaii, and Department of Health, State of Hawaii" which was executed on March 29, 2000, to help the DOT-AIR comply with its NPDES permit coverages for various airports. As stated in the MOU, 40 CFR 122.26(d)(2)(i) requires that DOT-AIR obtain the legal authority to control the discharge of pollutants to its Small MS4. Amendments to the MOU, if any, shall be summarized in the End-of-Year Report.

G. LOCATION MAP

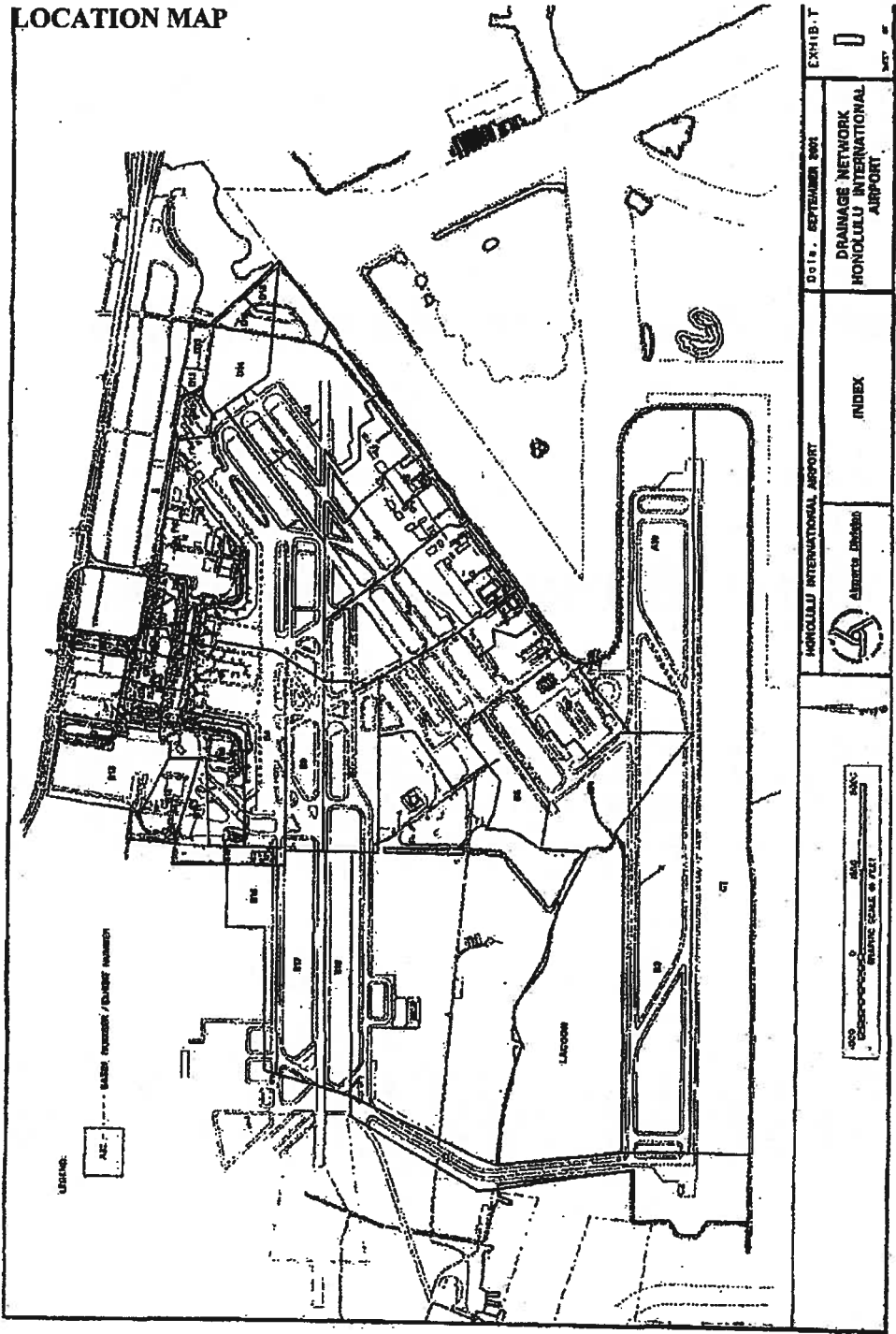


Exhibit "I"

The following Section 4.26 of the General Conditions of Design-Build Contracts City and County of Honolulu (02/2009) describes the terms of the CITY's warranty to the STATE, pursuant to the terms of Article III, Paragraph 10 of the Master Agreement. Section 4.26(e) is not applicable to the extent that it limits the guarantee period for a period of one year upon final acceptance of the work by the Officer-in-Charge; for the purposes of the Master Agreement the guarantee period of the CITY's warranty to the STATE is twenty-four (24) months after STATE acceptance of PROJECT work and maintenance work.

[Insert Section 4.26 of the General Conditions of Design-Build Contracts City and County of Honolulu (02/2009)]

(e) When the Officer-in-Charge determines that the project is substantially complete, a pre-final inspection will be conducted by the Officer-in-Charge along with representatives of other City agencies interested in the project, within seven days of receipt of the request from the Contractor.

(f) If the pre-final inspection discloses only minor discrepancies, the Officer-in-Charge shall accept the project as substantially complete and issue in writing, a list of the discrepancies that need to be corrected including all documents required by the Contract, hereinafter referred to as the "punch list," and the time in which the Contractor must complete the punch list. The date of acceptance of the project as substantially complete shall signify the end of the contract completion time.

(g) The Contractor shall, within seven days after receipt of the punch list, proceed to complete the items on the punch list. Upon completion, the Contractor shall submit a written request for a final inspection, after which, if the Officer-in-Charge finds that all discrepancies are satisfactorily corrected, the Officer-in-Charge will accept the project as completed, hereinafter referred to as "final acceptance."

(h) Noncompliance. If the Contractor fails to proceed or complete the punch list within the specified times, the Officer-in-Charge may proceed to have such work performed at the Contractor's expense, and the Contractor's sureties will be liable therefor. The City shall be entitled to reasonable attorneys' fees, consultants' fees and costs necessarily incurred by the Contractor's refusal to complete the contract and to pay such costs of corrective work.

(i) Upon final acceptance, the Contractor shall be relieved of its responsibility in maintaining and protecting the work and site and for injury to persons or property. Release of final payment shall be as specified in section 6.7, "Final Payment."

(j) Prior to release of final payment, the Contractor shall submit, within thirty days after final acceptance, or within such time as the Officer-in-Charge may allow, all remaining documents required by the Contract.

4.26 Guarantee. (a) This guarantee shall be deemed supplemental to guarantee provisions provided in other sections of the specifications for the individual units and systems of units so specified.

(b) Performance. The Contractor guarantees its performance and the performance of its subcontractors under the contract.

(c) Materials and equipment. The Contractor also guarantees all materials and equipment furnished or installed under the contract against defects and poor workmanship and to be in operable condition upon final acceptance of the work or portions of the work, and that all such materials and equipment conform to the requirements of this contract and be fit for the use intended.

(d) Design. The Contractor guarantees the design to meet the criteria and operating requirements specified and against failure to perform in accordance with such criteria and operating requirements.

(e) Guarantee period. Unless otherwise specifically stated in the RFP that a longer period is intended, the guarantee shall extend for a period of one year upon final acceptance of the work by the Officer-in-Charge and shall include all labor, materials, equipment and parts. The Officer-in-Charge may also determine the guarantee period to commence upon acceptance of the material or equipment installed, or

work performed. Furthermore, this period shall be extended from the time of correction of any defect or failure, corrected under the terms of this guarantee, for a like period of one year. The Contractor shall provide a new certificate of guarantee for the extended one-year period.

(f) **Correction.** The Contractor shall correct all defects or failures discovered within the guarantee period. The City will give the Contractor prompt written notice of such defects or failures following their discovery. The Contractor shall commence corrective work within seven days following notification and shall diligently prosecute such work to completion. The Contractor shall bear all costs of corrective work, which shall include necessary disassembly, transportation, reassembly and retesting, as well as repair or replacement of the defective materials or equipment and any necessary disassembly and reassembly of adjacent work.

(g) **Noncompliance.** If the Contractor fails to perform corrective work in the manner and within the time stated, the City may proceed to have such work performed at the Contractor's expense, and the Contractor's sureties will be liable therefor. The City shall be entitled to reasonable attorneys' fees, consultants' fees and costs necessarily incurred by the Contractor's refusal to complete the contract and to pay such costs of corrective work.

(h) **Performance bond.** Unless otherwise specifically stated in the RFP that a longer period is intended, the performance bond shall be in full force and effect for the duration of the contract and for a period of one year after final acceptance of the contract by the Officer-in-Charge.

(i) **Rights and remedies.** The rights and remedies of the City under this provision do not preclude the exercise of any other rights or remedies provided by this contract or by law with respect to unsatisfactory work performed by the Contractor.

4.27 As-built drawings. The Contractor shall maintain at the job site two (2) sets of full size contract drawings, marking them in red to show all variations between the construction actually provided and that indicated or specified in the contract documents, including buried or concealed herein, or where variations in scope or character of work from that of the original contract are authorized, the drawings shall be marked to define the construction actually provided. Where equipment installation is involved, the size, manufacturer's name, model number and power input or output characteristics, as applicable, shall be shown on the as-built drawings. The representations of such changes shall conform to standards and details as necessary to clearly portray the as-built construction.

The drawings shall be maintained and updated on a daily basis. Monthly and final payments to the Contractor shall be subject to prior approval of the updated drawings, including approved Change Order changes to design.

On completion of the work, both sets of marked-up drawings shall be delivered to the Officer-in-Charge and shall be subject to the Officer-in-Charge's approval before acceptance.

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("this Agreement") is entered into and is effective as of _____, 2013 (the "Effective Date"), by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, with its principal place of business and mailing address at Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813 ("Assignor" or the "City"), and the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous agency of the City and County of Honolulu, with its principal place of business and mailing address at 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813 ("Assignee" or "HART").

WITNESSETH:

WHEREAS, the City, by HART, is constructing the Kamehameha Highway Guideway, the Airport Guideway, and the City Center Guideway Sections (the "Project") of the Honolulu Rail Transit Project, which is a fixed guideway system ("H RTP");

WHEREAS, the Project is proposed to be situated within highway rights-of-way that are under the jurisdiction, authority, and control of the State of Hawaii, Department of Transportation ("State");

WHEREAS, in connection with the H RTP, Assignor and the State entered into that certain Master Agreement between the City and County of Honolulu and the State of Hawaii for the Honolulu Rail Transit Project (Sections to and from: Kamehameha Highway Guideway, Airport Guideway and City Center Guideway) dated _____, 2013 (the "Master Agreement");

WHEREAS, the Master Agreement contemplates Assignor and the State entering into incidental or related agreements in connection with the H RTP, including, but not limited to, Joint Use and Occupancy Agreements (collectively, "Related Agreements"; the Master Agreement and the Related Agreements being collectively called the "Agreements");

WHEREAS, under Section 17-103 of the Revised Charter of the City and County of Honolulu 1973, as amended (the "Charter"), HART has the authority to develop, operate, maintain, and expand the H RTP;

WHEREAS, Ordinance 07-001 (2007) ("Ordinance 07-001") requires that capital costs to construct the H RTP shall be paid entirely from general excise and use tax surcharge revenues, interest earned on those revenues, and any federal, state, or private revenues;

WHEREAS, HART, as a semi-autonomous agency of the City, negotiated the terms and conditions of the Agreements; and

WHEREAS, in accordance with the provisions of the Charter and Ordinance 07-001, Assignor wishes to assign all of its rights, duties, liabilities, and obligations under the Agreements to Assignee and Assignee wishes to assume all such rights, duties, liabilities and obligations under the Agreements;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. **TERMS.** Terms not defined herein shall have the meanings ascribed to them in the Agreements.
2. **ASSIGNMENT.** Assignor hereby assigns, transfers, sets over and delivers unto Assignee, and its successors and permitted assigns, and all of the right, title and interest of Assignor and all of Assignor's rights, duties, liabilities and obligations in and to the Agreements, to have and to hold the same with the benefit of all rights, powers, promises, covenants and agreements which are set forth in the Agreements, as set forth in the Agreements.
3. **ASSUMPTION.** Assignee, for itself and its successors and assigns, hereby agrees to succeed to and to assume all of Assignor's rights, duties, liabilities and obligations in and to the Agreements. Furthermore, ASSIGNEE does hereby promise, covenant and agree that Assignee will observe and perform all of the covenants in the Agreements contained and on the part of Assignor to be observed and performed, including, without limitation, the obligation to pay for all capital costs to construct the H RTP;
4. **FUTURE RELATED AGREEMENTS.** Assignor and Assignee hereby agree that, if the City is required by to enter into any future Related Agreements with the State (the "Future Agreements"), the City shall have the right to approve of the terms and conditions of the Future Agreements and, upon execution of the Future Agreements by the parties thereto, the rights, duties, liabilities and obligations of the City in and to such agreement(s) shall be assigned to HART and HART shall assume all such rights, duties, liabilities and obligations in and to the Future Agreements.
5. **INDEMNITY.** Assignee will indemnify, defend and hold Assignor harmless from and against all obligations, liabilities, claims, accounts, and demands (including, without limitation, attorneys' fees) arising or accruing under the Agreements and Future Agreements.
6. **GENERAL PROVISIONS.** The parties hereto agree that (1) the terms "Assignor" and "Assignee," as used herein, or any pronouns used in place thereof, shall mean and include the named Assignor and Assignee and their respective successors and permitted assigns, and shall be so construed such that, whenever applicable with reference to any of them, the use of the singular shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include either or both of the other genders, and (2) except as specifically set forth in this Agreement, all terms and conditions of the Agreements shall remain in full force and effect.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of the Effective Date.

"Assignor" or "City"

"Assignee" or "HART"

CITY AND COUNTY OF HONOLULU

HONOLULU AUTHORITY FOR RAPID
TRANSPORTATION

Michael D. Formby, Director
Department of Transportation Services

Daniel A. Grabauskas
Executive Director and CEO

APPROVED AS TO FORM
AND LEGALITY

APPROVED AS TO FORM
AND LEGALITY

Deputy Corporation Counsel
For the City

Deputy Corporation Counsel
For HART

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 13-203, CD1, FD1

Introduced: 08/28/13 By: ERNEST MARTIN (BR)

Committee: INTERGOVERNMENTAL
AFFAIRS AND HUMAN
SERVICES

Title: RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, RELATING TO A MASTER AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU AND THE STATE OF HAWAII FOR SECTIONS OF THE HONOLULU RAIL TRANSIT PROJECT FROM KAMEHAMEHA HIGHWAY TO ALA MOANA CENTER, AND AN AGREEMENT WITH THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION (HART) RELATING TO THE CITY'S ASSIGNMENT AND HART'S ASSUMPTION OF THE CITY'S OBLIGATIONS THEREUNDER.

VERSIONS:	COMMITTEE REPORTS:	MEETINGS: MINUTES & VIDEOS	COMMUNICATIONS/ TESTIMONIES (If Any):
RES13-203 RES13-203, CD1 RES13-203, CD1, FD1	CR-270	VIDEOS – Click Here	Click Here

Voting Legend: * = Aye w/Reservations

09/09/13	INTERGOVERNMENTAL AFFAIRS AND HUMAN SERVICES	CR-270 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION AS AMENDED IN CD1 FORM.
09/11/13	COUNCIL	RESOLUTION AMENDED TO FD1. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE. CR-270 AND RESOLUTION 13-203, CD1, FD1 WERE ADOPTED. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI*, MANAHAN, MARTIN, MENOR, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.


BERNICE K. N. MAU, CITY CLERK


ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER